NO. 45748-2

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DAN ALBERTSON, as Limited Guardian ad Litem for
AIDEN RICHARD BARNUM, an incapacitated minor,

Appellant,

v.

STATE OF WASHINGTON acting through its
DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent.

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

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I. INTRODUCTION

The only theory of liability Plaintiff argued to the jury was a claim of negligent investigation under RCW 26.44.050. The Supreme Court has repeatedly emphasized that this cause of action is narrow and cognizable only when the Washington State Department of Social and Health Services ("Department") conducts a biased or incomplete investigation that leads to a harmful placement decision such as "failing to remove a child from an abusive home." *Roberson v. Perez*, 156 Wn.2d 33-45, 123 P.3d 844 (2005) (quoting *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 591, 70 P.3d, 954 (2003)).

Because Dr. Duralde, a child abuse medical expert, concluded the injury to Plaintiff's arm was accidental, there were insufficient facts to conclude Plaintiff had been intentionally injured by his father, and therefore no basis for a court to declare Plaintiff dependent and remove him from his father's custody. Plaintiff never sought to prove the Department's investigation negligently failed to discover facts that would have been the basis for a court order removing him or his father from their home. RP 169. Instead, over the Department's multiple objections, he sought to expand the cause of action for negligent investigation beyond the scope delineated by the Supreme Court limiting liability to harmful placement decisions, arguing a myriad of non-cognizable theories, such as

failing to implement a safety plan that would have required Plaintiff's separation from his parents—which the Department cannot do.[1] These non-cognizable claims improperly imposed a duty on the Department to protect the Plaintiff while he was in the custody of his parents.

Plaintiff continues to argue that the Department has the authority to engage in the extra-judicial removal of children from their parents—to place them outside the family home—but ignores the fact that parents have a constitutional right to be with their children, which can only be taken away after being afforded due process in a judicial hearing.

If Plaintiff's negligent investigation theory had been properly limited to one that resulted in a placement decision—failing to remove him from his parents' home—the Department's CR 50 motion should have been granted. There was no basis for a jury to find the Department's investigation was the cause-in-fact of the failure to remove him from his parents because Plaintiff offered no evidence to establish a court would have: (1) found Plaintiff had been intentionally injured by his father; (2) entered an order declaring him to be dependent; or (3) ordered Plaintiff removed from his father's custody. *See* Defendant's Motion for Judgment

[1] *See* Plaintiff's proposed Jury Instruction 3, which set forth 12 different theories of negligent investigation liability (CP 2307-2309) and Plaintiff's PowerPoint presentation that was shown to the jury in his closing argument, which contained 16 different theories of how Child Protective Services (CPS) was negligent (CP 4216-18).

as a Matter of Law Under CR 50 (Appendix A). CP 3385-3408. Given the absence of such evidence, this case should have been dismissed.

Even assuming it was proper for a jury to determine liability, the trial court erred in giving Jury Instruction 10 and allowing the jury to consider the multiplicity of general, non-cognizable theories of "negligent investigation" asserted by the Plaintiff that go far beyond placement decisions. The trial court erred in failing to give the Defendant's proposed Jury Instructions 20 and 37, which properly limited the scope of liability under a cause of action for negligent investigation to a biased or faulty investigation that resulted in a harmful placement decision. *See* CP 2376, 3897 (Jury Instructions 20 and 37).

II. STATEMENT OF THE CASE

Before the trial in this case began, the Department sought to prevent Plaintiff from expanding his cause of action for negligent investigation to include violations of internal Department policies and procedures. CP 789, 796-97, 1147, 1155-56, 1799-1800 (Department's Motion in Limine). The Department argued in its trial brief that liability for a negligent investigation was limited to the narrow, implied cause of action under RCW 26.44.050 requiring the claimant to prove that an allegedly biased or incomplete investigation was the proximate cause of a harmful placement. The Department specifically argued to the trial court

that an executive order referencing child protective teams did not create an actionable tort duty and that the Department had no common law duty to protect children from their parents. CP 1624-1638. At trial, Plaintiff nonetheless argued to the jury that the Department should be liable for violating its internal policy directives and an executive order. RP 233-35, 1941-42.

At the conclusion of Plaintiff's case, the Department moved to dismiss Plaintiff's non-cognizable claims; arguing, inter alia, that there was no common law duty to protect children and no claim for negligent implementation of a safety plan. The Department also moved to dismiss Plaintiff's negligent investigation claim because he had offered no evidence establishing facts from which a court could have entered an order authorizing removal from his parent's custody. Therefore, Plaintiff had not established causation—that a negligent investigation had resulted in a harmful placement, i.e. the failure to remove Plaintiff from his father's care. CP 3385-3408. *See* Appendix A.

Finally, at the conclusion of the trial, the Department specifically argued there was no cause of action for voluntary placement decisions or for an alleged failure to provide protective services, citing *Roberson v. Perez* and other controlling Supreme Court precedent. *See* CP 3859-3866

(Supplemental Memorandum in Support of Defendant's Renewed CR 50 Motion).

Although the Department prevailed in spite of the trial court's errors, in order to avoid the reoccurrence of similar errors in the future, the Department requests that this Court clarify that a cause of action for negligent investigation does not impose upon the Department a general duty to protect children while they are in their parents' care, nor do internal policy directives regarding safety plans or executive orders regarding child protective teams impose actionable tort duties against the Department.

III. ARGUMENT

A. The Trial Court Erred In Expanding The Cause Of Action For Negligent Investigation To Include Negligence Liability Theories That Go Beyond An Investigation That Results In The Harmful Placement Of A Child

1. The Scope Of The Department's Duty In Child Abuse Investigations Has Been Clearly Defined By The Supreme Court

The cause of action for negligent investigation does not arise from the common law but is instead a narrow cause of action implied from RCW 26.44.050. *See Tyner v. Dep't of Soc. & Health Servs.*, 141 Wn.2d 68, 79-81, 1 P.3d 1148 (2000). In *M.W.*, the plaintiffs argued that the cause of action encompassed all physical and emotional injuries suffered

by a child as a result of a negligent investigation. *M.W.*, 149 Wn.2d at 589. The court rejected that contention and held that negligent investigation claims were cognizable "only when the Department conducts a biased or faulty investigation that leads to a harmful placement decision, such as placing a child in an abusive home, removing the child from a non-abusive home, or failing to remove a child from an abusive home." *M.W.*, 149 Wn.2d at 591. Contrary to Plaintiff's contention, the *M.W.* court did not hold that CPS had a duty to protect children from harm by a parent or third party under a common law *parens patriae* theory. *See* Reply Brief of Appellant (Reply Br. Appellant) at 44. Further, The doctrine of *parens patriae* does not create tort liability. *See* § C *infra* at 11-13. The dicta in *M.W.* about the existence of a common law duty pertained to the obligation of the Department *itself* not to negligently inflict harm on a child while performing its investigation, not a duty to protect children from harm by their *parents* during an investigation. *M.W.*, 149 Wn.2d at 600-01. In *M.W.*, the court specifically noted that the plaintiff had dismissed other, common law claims for assault, invasion of privacy, civil rights violation, and outrage. Like this case, the only cognizable cause of action at issue in *M.W.* was one for negligent investigation. The holding in *M.W.* unequivocally requires that in order for a negligent investigation

to be actionable it must lead to "a harmful placement decision." *See Roberson*, 156 Wn.2d at 46.

Plaintiff's mischaracterization of certain precedent discussing an expanded scope of liability under a cause of action for negligent investigation warrants a brief response. *See* Reply Br. Appellant at 41-42. As the Supreme Court has noted in *Ducote v. State*, 167 Wn.2d 697, 702, 222 P.3d 785 (2009), its decision in *Babcock v. State*, 116 Wn.2d 596, 809 P.2d 143 (1991) dealt with the issue of immunity, not the scope of a negligent investigation cause of action. Regarding the *Leslie* decision, in *M.W.*, 149 Wn.2d at 599-600, the court reversed the Court of Appeal's reliance upon loose language in *Leslie v. DSHS*, 83 Wn. App. 263-67, 921 P.2d 1066 (1996), concluding that the court had conflated the scope of duty with qualified immunity. The *Leslie* court rejected the trial court's finding of a general duty to investigate reasonably and limited the scope of the duty to those investigations that result in harmful placements. Finally, this Court's holding in *Yonker v. Department of Social & Health Services*, 85 Wn. App. 71, 930 P.2d 958 (1997), does not, as Plaintiff argues, hold that the Department has a statutory duty under RCW 26.44.050 "to provide services during the report and investigation of suspected abuse and neglect." Reply Br. Appellant at 42. *Younker* dealt with a failure to investigate an allegation of abuse—and to whom that duty was owed—not

the scope of the duty to investigate or provide services during an abuse investigation. *Yonker*, 85 Wn. App. at 81 ("Nor do we address the scope or intensity of the investigation required, as those issues are not before us in this appeal.").

2. The Department Has No Duty Under RCW 26.44.050 To Seek Voluntary Separation Of A Child From His Parents

In support of his expanded cause of action for negligent investigation, Plaintiff suggests the Department has a duty to seek the voluntary separation of a parent and child in cases where the Department's child abuse expert has determined the cause of the child's injury was more than likely accidental. *See* Plaintiff's proposed Jury Instructions 3 and 31. CP 2307-09, 3634; Reply Br. Appellant at 53. Plaintiff's assertion fails on both legal and factual grounds—the Department has no liability for failing to pursue a "voluntary" placement, and even if it did, Plaintiff presented no evidence at trial to establish that his voluntary placement outside the home would have been in place at the time of his injury on December 22, 2008.

Contrary to Plaintiff's claims at trial and on appeal, the Department is not liable for failing to seek the voluntarily separation of a child from his or her parents. The only way to prove liability based on the Department's failure to remove an abused child from his or her parents is

to establish that a complete and unbiased investigation would have yielded facts providing a basis for a court to declare the child dependent and authorize an order directing removal from his or her parents' custody. As discussed in depth in the Brief of Respondent/Cross-Appellant at 65-66, under RCW 26.44.050 liability does not extend to the voluntary decisions of parents, and CPS does not have a legal duty to "persuade" parents to voluntarily place their children outside the home. *Roberson*, 156 Wn.2d at 46-47.

3. The "Other Options" Relied On By Plaintiff To Effect His Extrajudicial Removal From His Parents' Care Are Each Voluntary Acts That Do Not Create Liability Under RCW 26.44.050

Plaintiff's own description of the Department's alleged "other options" for removing him from his parents' care outside of the statutory framework of Chapter 13.34 RCW unequivocally demonstrates his acknowledgment that these measures were indeed voluntary. These consist of the Department "suggesting" that Plaintiff's father separate from him during the investigation, or likewise "suggesting" that Plaintiff's father have only supervised care of Plaintiff. Reply Br. Appellant at 53. Plaintiff correctly concedes that the Department could have only *suggested* these measures, rather than *mandated* them absent a court order

declaring Plaintiff dependent. *Roberson* and *M.W.* preclude liability for such voluntary placement decisions.

Further, the Department argued in the Brief of Respondent/Cross-Appellant at 58-61, suggesting that the Department pressure parents to voluntary relinquish care of their child without initiating a dependency action circumvents state law as well as the substantive and procedural due process rights of parents and children inherent in the statutory framework of Chapter 13.34 RCW. *See In re A. W. & M.W. Dep't of Soc. & Health Servs.*, ___ P.3d ___, No. 90393-0, 2015 WL 710540 (Wash. Feb. 19, 2015) (parents have a fundamental right to the care, custody and management of their children—a right far more precious than any property right).

B. *M.W.* Does Not Recognize A Common Law Duty To Prevent All Harm To Children, But Instead Expressly Rejects It

In Reply Brief of Appellant at 43, Plaintiff concedes that *M.W.* limits the Department's liability in negligent investigation claims to circumstances where it gathered incomplete or biased information that resulted in a harmful placement decision. In an attempt to expand the Department's liability beyond the narrow scope of RCW 26.44.050, however, Plaintiff argues that *M.W.* additionally established a "general common law tort duty to the children, apart from any duty under

RCW 26.44.050." Reply Br. Appellant at 44. This mischaracterizes the express language of *M.W.* The dicta relied upon by Plaintiff pertains to the obligation of the Department *itself* to not negligently inflict harm on a child while performing its investigation, not a duty to protect children from harm by *their parents* during an investigation. *M.W.*, 149 Wn.2d at 600-01.

Additionally, Washington courts have long rejected a common law cause of action for negligent investigation. *See Ducote*, 167 Wn.2d at 702 (citing *Pettis v. State*, 98 Wn. App. 553, 558, 990 P.2d 453 (1999)) ("In general, a claim for negligent investigation does not exist under the common law of Washington. That rule recognizes the chilling effect such claims would have on investigations."). In *M.W.*, the court specifically rejected an argument that language in RCW 26.44.010 supported an expansive duty to protect children from all harm. *M.W.*, 149 Wn.2d at 598-99. No Washington court has recognized any other statutory or common law duty requiring the Department to protect children from their parents.

C. *M.W.* And *Braam* Both Reject A Common Law Duty Under The *Parens Patriae* Theory

Plaintiff alternatively argues that the Department's liability for failing to protect children from abuse by their parents arises out of the

concept of *parens patriae* and the authority of the Department to intervene when a child's physical or mental health is seriously jeopardized by parental misconduct. *See* Reply Br. Appellant at 39 (citing RCW 26.44.010; RCW 13.34.020; and RCW 74.13.031). But Plaintiff fails to acknowledge that this argument has twice been rejected by the Supreme Court, both in *M.W.* and in *Braam ex. rel. v. State*, 150 Wn.2d 689, 711-12, 81 P.3d 851 (2003).

Contrary to Plaintiff's contention, the *M.W.* court did not hold that the Department had a duty to protect children from harm by a parent or third party under a common law *parens patriae* theory. *See* Reply Br. Appellant at 44. In fact, it specifically rejected the argument that language in RCW 26.44.010 relating to prevention of further abuse and safeguarding the general welfare of abused children supported a more expansive duty beyond that found in RCW 26.44.050. *M.W.*, 149 Wn.2d at 598-99. *M.W.* also rejected arguments that RCW 13.34.020 (describing a child's rights) and RCW 74.13.010 (describing the purpose of child welfare statutes) support finding a general statutory duty of care for a claim of negligent investigation. *Id.*

Similarly, in *Braam,* the Washington Supreme Court upheld the dismissal of liability claims based on RCW 74.14A.050(2)(3); RCW 74.13.250; and RCW 74.13.280—all concerning the placement of

dependent children. The court concluded that while all of the statutes had been enacted for the special benefit of dependent children, "We find no evidence of legislative intent to create a private cause of action, and that implying one is inconsistent with the broad power invested in the Department to administer these statutes." *Braam,* 150 Wn.2d at 711-12.

Additionally, in 2012 Washington's Legislature further restricted governmental tort liability for a claim of negligent investigation through the enactment of RCW 4.24.595. RCW 4.24.595(1) limits the Department's liability for emergent child placement investigations that determine, *inter alia*, to leave a child with a parent, to acts or omissions constituting gross negligence. Further, RCW 4.24.595(2) changes the parameters of tort liability set forth in *Tyner,* 141 Wn.2d at 68, by eliminating the Department's liability based upon compliance with court orders, including shelter care and dependency orders, and provides witness immunity for the Department and those employees who provide reports and recommendations to the court.

While the Legislature has enacted statutes authorizing the Department to intervene and to protect children, the enactment of RCW 4.24.595 directly undermines Plaintiff's claims that these statues were intended to create new or expand existing tort liability for negligent investigation under a *parens patriae* theory or otherwise.

1. Imposition Of A Generalized Common Law Duty To Protect Children From Their Parents Would Be Beyond The Scope Of The Legislature's' Waiver Of Sovereign Immunity

As noted in the preceding arguments, the Washington Supreme Court has rejected arguments that statutes enacted to allow the Department to exercise its *parens patriae* authority to protect children being harmed by their parents also impose tort liability for the Department's failure to do so. Having failed to establish any statutory basis for imposing such broad liability on the Department for failing to protect children from being harmed by their parents, Plaintiff asserts this liability nonetheless exists under common law. *See* Reply Br. Appellant at 6, 38, 44-48. Yet, recognition of such liability would be beyond the scope of the Department's waiver of sovereign immunity.

The legislature is the branch of government empowered to delineate when and how the state can be subjected to a suit for money damages. Wash. Const. art. II, §26. Washington's legislature enacted a general waiver of the Department's sovereign immunity in 1961.[2] RCW 4.92.090 is a direction to the courts not to subject the state to liability for which there is no private sector analog, thus the statute's

[2] *See* RCW 4.92.090. The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct **to the same extent as if it were a private person or corporation** (emphasis added).

waiver of sovereign immunity requires analogous, private sector liability before the state can be liable in tort for damages. *Edgar v. State*, 92 Wn.2d 217, 595 P.2d 534 (1979) (RCW 4.92.090 does not render the state liable for every harm that may flow from governmental action, but only harm that is the result of tortious misconduct). In waiving sovereign immunity, the Legislature did not create any new liability. *See J & B Dev. Co. v. King Cnty.*, 100 Wn.2d 299, 304, 669 P.2d 468 (1983) ("It should be noted, however, that this type of legislation creates no new causes of action, imposes no new duties and brings into being no new liability.") (internal citations omitted).

When a tort lawsuit is brought against the state, the starting point in this Court's analysis is whether the Plaintiff can show a waiver of the state's sovereign immunity. *Donohoe v. State*, 135 Wn. App. 824, 832, 142 P.3d 654 (2006). Because no private person or corporation has a common law duty to protect children from their parents (nor a corresponding liability if they do not), there is no private sector analog that can be the basis for imposing such liability on the Department. RCW 4.92.090. *Munich v. Skagit Emergency Commc'n Ctr.*, 175 Wn.2d 871, 887, 288 P.3d 328 (2012) (statutes that impose duties on government that are not imposed on private persons or corporations and that are not analogous to chargeable misconduct and liability by private persons and

corporations, such as passing laws, holding elections, issuing permits, inspecting buildings or maintaining the peace cannot be the basis of governmental liability). *See also Linville v. State*, 137 Wn. App. 201, 208, 151 P.3d 1073 (2007) (statute requiring daycare operator to obtain liability insurance for sexual abuse was a governmental function for which no private right of action existed).

Consequently, the only scenario in which the Department owes a tort duty to act to protect children is the implied statutory cause of action under RCW 26.44.050. *See* Brief of Respondent/Cross-Appellant (Br. Resp./Cross-Appellant) at 61-64. The Plaintiff's brief mischaracterizes the Department's position regarding its duty—the Department is not demanding that this Court "severely truncate its duty." Reply Br. Appellant at 1. Nor is the Department seeking "virtual immunity." Reply Br. Appellant at 37. Rather, the Department's liability for negligent investigation was laid out in its proposed Jury Instructions 20 and 37. *See* § E *infra.* at 20-21; CP 2376, 3897. The duty owed by the Department under RCW 26.44.050 is nothing less, but nothing more.

D. Internal Policies And Executive Orders Create Neither The Authority Nor A Duty To Remove Plaintiff From His Parents' Care Absent A Court Order

Throughout trial, Plaintiff argued the Department was liable to him based on its alleged violations of an executive order and non-compliance

with Department internal policies. RP 233-34 (Opening Statement); CP 2307-09, 2319 (Plaintiff's proposed Jury Instruction 3 and 13); CP 4210-4222 (Plaintiff's Closing Argument PowerPoint presentation); RP 1941-42. The Department argued to the trial court, that Plaintiff's claims were erroneous as a matter of law, not only because Plaintiff's theories went far beyond the implied cause of action for negligent investigation, but also because executive orders and internal policy directives themselves do not create legal obligations or responsibilities, nor have the force of law. Over the Department's objections, Plaintiff was nonetheless improperly allowed to present this myriad of non-cognizable negligence theories to the jury as a basis for liability. CP 3385-3407. *See* Appendix A.

In his Reply, Plaintiff suggests that the Department need not adhere to the due process requirements of Chapter 13.34 RCW in order to remove him from his parents' care, because the Department's authority to do so extra-judicially may be found in its own internal policy directives and a 1995 governor's executive order. Reply Br. Appellant at 3, 11, 38-40, 47 and 53. *See* Plaintiff's proposed Jury Instructions 3, 15-17, 31, 34; CP 2307-09, 2323-26, 3634, 3875-77. Plaintiff's persistent contention that internal policy directives and executive orders created actionable tort duties (Reply Br. Appellant at 3, 11, 47, and 53) is a misstatement of the

law and should be explicitly rejected by this Court. *See also* Br. Resp./Cross-Appellant at 59-60.

In *Fischer-McReynolds v. Quasim*, 101 Wn. App. 801, 812-13, 6 P.3d 30 (2000), this Court held an executive order requiring state agencies to develop policies and procedures related to domestic violence did not create a private cause of action to recover damages for the failure of the Department to comply with the order's directives. This Court further held that in the absence of a constitutional or statutory grant of authority from the legislature, the governor cannot create obligations, responsibilities, conditions, or processes having the force and effect of law merely by issuing an executive order. *McReynolds,* 101 Wn. App. at 812-13.

Subsequently, the Washington Supreme Court reversed a decision by this Court upholding a jury instruction based on an internal policy directive. *Joyce v. Dep't of Corr.*, 155 Wn.2d 306, 323-24, 119 P.3d 825 (2005). The Supreme Court held that, "because the Department's policy directives are not promulgated pursuant to legislative delegation, they do not have the force of law." *Joyce*, 155 Wn.2d at 323. *See also Melville v. State*, 115 Wn.2d 34, 793 P.2d 952 (1990) (internal policies and directives do not create law). Further, as the United States Supreme Court has noted, basing liability on administrative policies has the negative effect of

discouraging an agency from promulgating performance standards, resulting in the exercise of standardless discretion. *See Sandin v. Conner*, 515 U.S. 472, 482, 115 S. Ct. 2293, 2299, 132 L. Ed.2d 418 (1995) (states may avoid creating liberty interests by having scarcely any regulations when such rules result in liability and litigation).

It is axiomatic that the statutory procedures enacted by the legislature for removing children from their parents, discussed in depth in the Brief of Respondent/Cross-Appellant at 20-23, are controlling. Plaintiff's repeated claim that the Department has the authority to remove him from his parents' care without a court order is not only erroneous as a matter of law, but violates the substantive and procedural due process rights of parents and children and conflicts with the statutory directives that the dependency process focus upon the reunification of families.[3] *See* Br. Resp./Cross-Appellant at 58-60. *See Walker v. King Cnty.,* 630 F. Supp.2d 1285, 1294 (W.D. Wash., 2009) (parents and children have a well-established constitutional right to live together without governmental interference.)

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[3] *See* RCW 13.34.020 (the family unit is a fundamental resource of American life which should be nurtured); RCW 74.14C.005(1) (efforts to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare system); RCW 13.32A.150(1) (a family assessment plan of services shall be aimed at family reunification in avoidance of out-of-home placement of a child); RCW 13.34.180 (DSHS must provide all reasonable services to parents before terminating parental rights); RCW 13.32A.082(3) (the department is required to offer reunification services to parents of runaway children).

Liability for negligent investigation must be consistent with statutes and constitutional mandates, and cannot be based on executive orders or internal policies.

E. Jury Instruction 10 Was Legally Erroneous Because It Did Not Instruct The Jury That An Investigation Can Only Be Negligent If It Is *Biased Or Incomplete* And Results In A Harmful Placement Decision

Plaintiff asserts that Jury Instruction 10 was an accurate statement of the law because it instructed the jury on the necessary causal link between a "negligent investigation" and a "harmful placement." *See* Reply Br. Appellant at 49-50. But this does not address the Department's assignment of error to jury instruction 10 and the failure to give the Department's proposed Jury Instructions 20 and 37.[4] Jury instruction 10 is an error of law because it did not limit the Department's liability to *biased or incomplete* investigations that result in harmful placement decisions, but rather allowed Plaintiff to argue for liability based on a myriad of actions he argued fell below a general standard of care. As discussed in the Brief of Respondent/Cross-Appellant at 67-68, our Supreme Court has "rejected the proposition that an actionable breach of duty occurs every time the state conducts an investigation that falls below a reasonable standard of care by, for example, failing to follow proper investigative

[4] *See* Appendix B.

procedures." *Petcu v. State*, 121 Wn. App. 36, 59, 86 P.3d 1234 (2004) (citing *M.W.*, 149 Wn.2d at 601-02).

Because Jury Instruction 10 did not limit the standard of care to an unbiased and complete investigation, as required by *M.W.* (and as correctly stated in the Department's proposed Jury Instruction 20 and 37), Plaintiff was improperly allowed to ask the jury to impose liability based on, for example, an alleged violation of executive orders; failure to assemble a child protective team; violations of internal Department policy directives; failure to implement a safety plan that would have sought Plaintiff's voluntary separation from his father; and failure to ensure Plaintiff's father was participating in voluntary services. *See* RP 1941-57 (Plaintiff's counsel's discussion of Jury Instruction 10 and his numerous liability theories in closing argument), and CP 4210-22 (Plaintiff's closing argument PowerPoint presentation claiming 16 separate negligence theories). *See also* Reply Br. Appellant at 3, 11, 38-40, 47 and 53.

By allowing Plaintiff to assert liability claims that do not exist under Jury Instruction 10, and not limiting liability for negligent investigation to the narrow cause of action that does exist, Plaintiff's proposed Jury Instructions 20 and 37, Jury Instruction 10 was an error of law. *See Hue v. Farmboy Spray Co., Inc.*, 127 Wn.2d 67, 91, 896 P. 2d 682 (1995) (errors of law in jury instructions are reviewed *de novo*).

F. Plaintiff's Discussion Of A Claim Under The Rescuer Doctrine Is Inapposite And He Never Raised Such A Claim At Trial

Plaintiff hypothesizes that the Department could have liability after assuming a duty under the rescuer doctrine, by requesting that his parents participate in a voluntary safety plan. *See* Reply Br. of Appellant at 46-47 (citing the Restatement (Second) of Torts, § 323). However that issue is not before this Court on appeal because Plaintiff never made an argument based on the rescuer doctrine at trial. Plaintiff's sole claim was for negligent investigation. *See* Plaintiff's proposed Jury Instruction 3 (CP 2307-09). The only claim that went to the jury was a claim of negligent investigation. *See* Jury Instruction 3 (CP 3962) and Jury Instruction 10 (CP 3969). Plaintiff cannot raise for the first time on appeal a theory of liability that was neither raised in the trial court nor presented to the jury. *See Sourakli v. Kyriakos, Inc.*, 144 Wn. App. 501, 508-509, 182 P.3d 985 (2008) (plaintiff could not raise for the first time on appeal a liability claim based on the rescue doctrine that had not been presented for adjudication in the trial court).

Moreover, the facts of Plaintiff's claim do not support the application of the rescue doctrine. Reliance is a necessary element of the rescue doctrine, and there is no evidence the Plaintiff's parents or grandparents relied on any assurances given by the Department. *See*

Osborn v. Mason Cnty., 157 Wn.2d 18, 134 P.3d 197 (2006) (no duty under rescue doctrine without reliance).

G. Plaintiff's Claim That The Jury Found The Department's Negligence Resulted In A Harmful Placement Is Completely Unfounded

Many of Plaintiff's non-cognizable negligence theories were based on a generalized duty on the part of the Department to protect Plaintiff from his parents (e.g. the failure to ensure voluntary services were implemented) and had nothing to do with whether some flaw in the Department's investigation caused him to be improperly returned to his parents' care.[5] Without a proper instruction limiting the scope of the duty on a negligent investigation claim, and in the absence of a special verdict form specifying that the jury's negligence finding was based upon an incomplete or biased investigation, there is no way to determine whether the jury's finding of negligence was in any way related to a harmful placement decision. For example, the jury could have found, consistent with the erroneous jury instructions and Plaintiff's argument, that the Department was negligent in failing to ensure his parents attended parenting classes, which did not involve a harmful placement decision. For these reasons, along with his complete lack of causation evidence,

[5] *See* Plaintiff's proposed Jury Instruction 3, which set forth 12 different theories of negligent investigation liability (CP 2307-2309) and Plaintiff's PowerPoint presentation that was shown to the jury in his closing argument, which contained 16 different theories of how Child Protective Services (CPS) was negligent (CP 4216-18).

Plaintiff's repeated claim that the jury found that the state's negligence "resulted in the harmful placement decision" is not only pure conjecture, it is contrary to the jury's finding of no proximate cause.[6]

H. The Department's Motions To Dismiss Should Have Been Granted Because Of Plaintiff's Inability As A Matter Of Law To Mandate The Separation Of Plaintiff From His Father As Of The Date Of Injury

In support of his assertion that the Department's CR 50 motions to dismiss were properly denied, Plaintiff asserts there was "ample evidence" at trial of how the Department could have "ensured" Plaintiff's safety without initiating a dependency, namely having law enforcement "detain" Plaintiff, having either of the hospitals that treated Plaintiff "detain" him, "suggest" that Plaintiff's father separate from him during the investigation, "suggest" only supervised care of Plaintiff by his father, assign a "child protection team" or "other [unidentified] measures outlined in CPS's policies and procedures."[7] Reply Br. Appellant at 53. The specific evidence relied upon by Plaintiff, however, does not establish that any of these measures would have likely prevented his injury.

As set forth in detail in Brief of Respondent/Cross-Appellant at 20-23, the law enforcement and hospital holds Plaintiff refers to in

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[6] *See* Brief of Respondent/Cross-Appellant pp. 18-20.

[7] The court need not examine this evidence if it agrees that the only way to ensure Plaintiff's December 20, 2008 injury did not occur was for the Department to obtain a court order allowing it to remove Plaintiff from his father's care as of the date of his injury.

RCW 26.44.050 and RCW 26.44.056 respectively, permit the temporary separation of a child from his or her parent, without first obtaining a court order, for a 72-hour period only. Separation continuing beyond the initial 72-hour period requires a judicial hearing in which the parent must receive notice and have an opportunity to be heard. *See* Chapter 13.34 RCW. Nor does Plaintiff explain how the Department can legally direct a law enforcement agency or hospital institution to "detain" a child in order to circumvent Chapter 13.34 RCW's judicial safeguards. More importantly, Plaintiff does not explain how ensuring his separation from his father for the 72-hour period following the start of the Department's investigation on November 19, 2008, would have ensured his separation from his father some thirty days later when his December 20, 2008 injury occurred.

Likewise, as Plaintiff's own terminology concedes, the Department could not have "ensured" Plaintiff's injury did not occur by simply "suggesting" he be separated from his father or that his father have only supervised care of him. As discussed in depth in the Brief of Respondent/Cross-Appellant at 72-74, neither Plaintiff's mother, father, aunt, paternal grandmother, or paternal grandfather testified that separation or supervision would have occurred had the Department simply "suggested" it. Moreover, Plaintiff presented no evidence as to who would take care of his father, a 17-year old high school student with no

job and no driver's license, and who was totally dependent on his parents for support. RP 975

Lastly, without citation to evidence or legal authority, Plaintiff claims that the Department simply "could have separated Mejia [Plaintiff's father] from the household." Reply Br. Appellant at 53. For the reasons discussed in Sections A-D, *supra*, this assertion is wholly inaccurate.

In sum, at trial Plaintiff failed to demonstrate how the numerous other alternatives he claims were available to the Department to ensure his injury did not occur could indeed have causally prevented his injury. The Department's CR 50 motions should have been granted by the trial court. *See* Appendix A.

I. Plaintiff's Judicial Estoppel Argument Is Unfounded, Improper, And Waived

1. Plaintiff's Judicial Estoppel Argument Is Factually Unfounded And Contrary To The Record

Because Plaintiff raised his judicial estoppel argument for the first time in his reply brief, this is the Department's first and only opportunity to address it. Specifically, Plaintiff contends that the Department should be judicially estopped from asserting on appeal that the harmful placement element of a cause of action for negligent investigation relates to causation rather than negligence because the Department allegedly argued to the

contrary to the trial court. However, the Department said nothing of the kind. A cursory review of the record, including the quotations excerpted in Reply Brief of Appellant at 22-23, shows that in both statements to the trial court the Department used the word "cause" and "causally." RP 1902-03 and CP 3872.

The Department's position on this point was crystal clear in its trial brief, wherein it stated:

> Plaintiff cannot establish a breach of the duty owed to him proximately caused his injuries. "To prevail, the Plaintiff must prove that the allegedly faulty investigation was the proximate cause of the harmful placement."
>
> CP 1626.

Similarly, the Department moved for judgment as a matter of law based on Plaintiff's failure to establish causation on his negligent investigation claim, i.e., that it had resulted in a harmful placement (the failure to remove him from his parents' home). CP 3385-3408; RP 1509-23, 1767-72.

Indeed, in arguing the Department's CR 50 motion for judgment as a matter of law, counsel stated:

> I think we have to start with the well-established principle that's at the top of the handout; that cause of action for the negligence of DSHS investigators are strictly limited to the narrow exception, when during a child abuse or neglect investigation conducted pursuant to RCW 26.44.050, the Department has gathered incomplete or biased information

> that results in a harmful placement decision, such as removing a child from a non-abusive home, placing a child in an abusive home, or letting a child remain in an abusive home. And I believe the allegation here is that Aiden was permitted to remain in what plaintiffs allege was an abusive home.
>
> So, in looking at what plaintiff has to do in this case *to establish causation,* would be to put forth some specific material facts that would have made this a complete investigation and *demonstrate how those facts would have altered the placement outcome* so as to prevent his injury.

RP 1510-11 (emphasis added).

The quote in Reply Brief of Appellant from the Department's objection to Plaintiff's proposed Jury Instruction 12 demonstrates that the Department was objecting because the Plaintiff's proposed instruction did not include the element that the negligent investigation must connect "causally" with the placement decision in order for there to be liability. CP 3872. The Department consistently argued that the causation element of a cause of action for negligent investigation required Plaintiff to prove that an incomplete or biased investigation resulted in ("caused") a harmful placement decision. *See* Department's proposed Jury Instructions 20 and 37 (CP 2376, 3897). *See* Appendix B. Accordingly, there is no inconsistency in the Department's position at trial and appeal, and judicial estoppel is not applicable.

2. The Doctrine Of Judicial Estoppel Only Applies To Factual Assertions, Not Legal Positions

The factual record is clear that the Department never took the position that the existence of a harmful placement relates to negligence, not causation. Even if it had, Plaintiff's assertion of judicial estoppel would be improper. Whether the harmful placement element of a cause of action for negligent investigation relates to negligence or causation is a legal issue.[8]

The purpose behind the doctrine of judicial estoppel is the prevention of inconsistent positions as to facts. It does not require counsel to be consistent on points of law. *Anfinson v. FedEx Ground Package Sys., Inc.*, 159 Wn. App. 35, 63, 244 P.3d 32 (2010); 14A Karl B. Tegland, *Washington Practice: Related Doctrines-Preclusion of Inconsistent Positions (Judicial Estoppel)* § 35:57 (2nd ed. 2015).

Although the Department has consistently contended, and even moved for judgment as a matter of law based on Plaintiff's failure to establish the harmful placement causation element of the cause of action for negligent investigation, because this is a legal issue and not a factual position, judicial estoppel does not apply. *Anfinson*, 159 Wn. App. at 63.

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[8] Under *Petcu v. State*, 121 Wn. App. 36, 56, 86 P.3d 1234 (2004), it is clear that the requirement that a negligent investigation result in a harmful placement is the causation element of that tort.

IV. CONCLUSION

RCW 26.44.050 creates a narrow cause of action for negligent investigation that is cognizable only when the Department conducts a biased or an incomplete investigation of an allegation of child abuse/neglect that results in a harmful placement decision. This liability is based on statute, not the common law, not internal policy directives, and not executive orders. Based upon the errors of the trial court in expanding liability for negligent investigation far beyond its statutory limits, the Department requests that this Court clarify the scope of the tort duty—what it includes and what it does not include.

RESPECTFULLY SUBMITTED this 27th day of February, 2015.

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CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I mailed the Reply Brief of Respondent/Cross-Appellant to all parties on record as follows:

First Class U.S. Mail, Postage Prepaid, and Email to:

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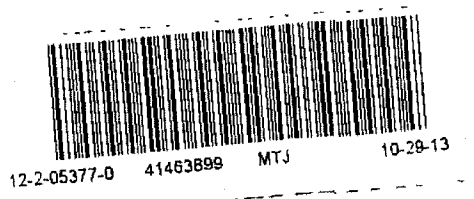
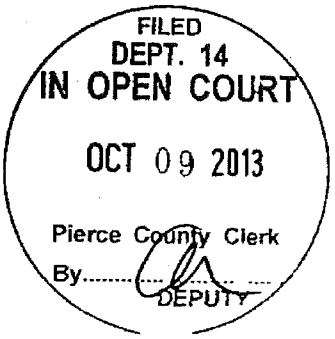
DATED this 27th day of February, 2015, at Tumwater, WA.

/s/ *Debora A. Gross*
DEBORA A. GROSS
Legal Assistant

Appendix A





Honorable Susan K. Serko

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

DAN ALBERTSON, as Limited Guardian ad Litem for AIDEN RICHARD BARNUM, an incapacitated minor,

Plaintiff,

v.

STATE OF WASHINGTON acting through its DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Defendant.

NO. 12-2-05377-0

DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW UNDER CR 50

I. RELIEF REQUESTED

Defendant Washington State Department of Social and Health Services (DSHS) moves for judgment as a matter of law under CR 50(a) and dismissal of Aiden Barnum's (Plaintiff) claims because as matter of law (1) he has not established causation and (2) DSHS had no duty to Plaintiff to implement an appropriate safety plan or monitor voluntary services.

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II. ANALYSIS AND ARGUMENT

A. CR 50 Standard

The court should dismiss the Plaintiff's claims for the above reasons based upon CR 50(a)(1) which states:

> If, during a trial by jury, a party has been fully heard with respect to an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party with respect to that issue, the court may grant a motion for judgment as a matter of law against the party on any claim, counterclaim, cross claim, or third party claim that cannot under the controlling law be maintained without a favorable finding on that issue. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment. A motion for judgment as a matter of law which is not granted is not a waiver of trial by jury even though all parties to the action have moved for judgment as a matter of law.

A motion for judgment as a matter of law "may be made at any time before submission of the case to the jury."[1] A motion for judgment as a matter of law may be brought after a party has been fully heard with respect to an issue and there is no legally sufficient basis for a reasonable jury to find in favor of the resisting party with respect to that issue.[2]

Granting a motion for judgment as a matter of law is appropriate in a jury trial when, viewing the evidence in the light most favorable to the nonmoving party, the court can say as a matter of law there is no substantial evidence or reasonable inference to sustain a verdict for the nonmoving party.[3] "A motion for judgment as a matter of law can be denied only when there is competent and substantial evidence on which the verdict can rest."[4] Evidence is "substantial to support a verdict," so as to justify denial of motion for judgment as a matter of

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[1] CR 50(a)(2)

[2] *Carlson v Lake Chelan Cmty Hosp*, 116 Wn App. 718, 75 P.3d 533 (2003), *review granted* 150 Wn.2d 1017, 81 P.3d 119 (2004)

[3] *Bishop of Victoria Corp. Sole v Corporate Business Park, LLC*, 138 Wn. App 443, 453, 158 P 3d 1183 (2007).

[4] *Id.* at 454 (citing *State v Hall*, 74 Wn.2d 726, 727, 446 P.2d 323 (1968)).

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law, if "it is sufficient to persuade a fair-minded, rational person of the truth of the declared premise. . . If it is clear that the evidence and reasonable inferences are insufficient to support the jury's verdict, then denial of a motion for judgment as a matter of law [is] inappropriate."[5]

B. Plaintiff's Negligent Investigation Claim Fails For Lack of Evidence of Causation

The Plaintiff alleges that DSHS acted negligently in the investigation of his November 18, 2008 injury, and therefore caused his damage. To establish this, the Plaintiff must show: (1) he was owed a duty; (2) DSHS breached that duty; and (3) the breach proximately caused him to be injured.[6] At trial, the Plaintiff was required to present evidence at trial that the actions of DSHS' actions were the proximate cause of his alleged injuries. "For legal responsibility to attach to the negligent conduct, the claimed breach of duty must be the proximate cause of the resulting injury."[7] A proximate cause is a cause "which, in a direct sequence, unbroken by any new, independent cause, produces the injury complained of and without which the injury would not have occurred."[8]

Washington law recognizes two elements to proximate cause: cause-in-fact and legal causation.[9] Both elements must be satisfied.[10] Cause-in-fact refers to the "but for" consequences of an act—the physical connection between the allegedly improper act and an injury.[11] "It is a matter of what has in fact occurred[.]"[12] In contrast, legal causation "rests on policy considerations as to how far the consequences of a defendant's act should extend and involves a determination of whether liability should attach as a matter of law given the

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[5] *Id*
[6] *Ruff v. King Cy*, 125 Wn.2d 697, 704, 887 P.2d 886 (1995)
[7] *Id.* at 704 (citing *LaPlante v State*, 85 Wn.2d 154, 159, 531 P.2d 299 (1975))
[8] *Fabrique v Choice Hotels Int'l, Inc.*, 144 Wn. App 675, 683, 183 P 3d 1118 (2008).
[9] *Hartley v State*, 103 Wn.2d 768, 777-78, 698 P 2d 77 (1985).
[10] *Ayers v Johnson & Johnson Baby Products Co*, 117 Wn.2d 747, 753, 818 P 2d 1337 (1991)
[11] *Fabrique*, 144 Wn. App. at 683
[12] *Tegman v Accident & Medical Investigations, Inc.*, 107 Wn. App. 868, 880, 30 P.3d 8 (2001)

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existence of cause in fact."[13] Legal causation is to be determined on "mixed considerations of logic, common sense, justice, policy, and precedent."[14]

1. Plaintiff Did Not Establish That A Negligent Investigation Was The Cause-In-Fact Of His Injury

It is well-settled law that a plaintiff alleging negligence cannot demonstrate cause-in-fact when he must rely upon conjecture to do so. Stated differently, a "[p]laintiff's case must be based on more than just speculation and conjecture."[15] The rule prohibiting speculation and conjecture is applied in all negligence cases—from automobile accidents,[16] to professional negligence claims,[17] to medical malpractice actions,[18] to actions for wrongful death.[19] Even claims against DSHS are not immune from this principle.[20]

In *Bordon,* Division I specifically addressed cause-in-fact in a negligent community supervision claim and held that "some evidence of a direct link between the Department of Correction's ("DOC") negligence and the harm to the third party is necessary to survive a CR 50 motion."[21] *Bordon* is applicable here.

Bordon involved an offender on community supervision for property crimes, burglary and eluding, who caused a fatality while driving drunk. The court acknowledged DOC had a

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[13] *Hartley*, 103 Wn.2d at 779 (emphasis original).
[14] *Id.*
[15] *Daugert v Pappas*, 104 Wn 2d 254, 260, 704 P.2d 600 (1985)
[16] *Moore v. Hagge*, 158 Wn App. 137, 150-51, 241 P.3d 787 (2010) (in applying the rule prohibiting conjecture, Division I held "the plaintiff must establish more than that the government's breach of duty *might* have caused the injury") (emphasis original); *see also Miller v. Likins*, 109 Wn. App. 140, 145-46, 34 P.3d 835 (2001).
[17] *Boguch v Landover Corp.*, 153 Wn. App. 595, 224 P.3d 795 (2009) (analyzed below).
[18] *Reese v. Stroh*, 128 Wn.2d 300, 309, 907 P.2d 282 (1995) ("Evidence in establishing proximate cause in medical malpractice cases must rise above speculation, conjecture, or mere possibility.").
[19] *Baker v U.S.*, 417 F Supp 471 (1975) (in recognizing that Washington law prohibits a jury to speculate, the court held that "proximate cause cannot be determined solely on conjecture or speculation").
[20] *See, e.g., Petcu v State*, 121 Wn. App 36, 55, 86 P.3d 1234 (2004) (recognizing that "[t]he nonmoving party may not rely on speculation" to overcome summary judgment) (citations omitted).
[21] *Bordon*, 95 P.3d at 772-73

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duty to prevent the specific harm at issue in *Bordon*, but determined that the evidence presented at trial left gaps in the chain of causation such that any conclusion that the offender would have been incarcerated on the day of the accident was based on speculation. The court stated that the plaintiff presented no evidence about "when a violation report would have been filed or when it would have been heard;" "no testimony about whether the violation would have been pursued or proven;" and no evidence or testimony suggesting that the court would have sentenced the offender to added jail time or that jail time would have encompassed date of accident.[22] This "lack of evidence requires a jury to guess not only whether and when the violation would have been pursued but also whether a judge would have done something differently if he or she had known about the violation and what that different result would have been."[23]

A similar conclusion was reached in *Boguch v. Landover Corp.*[24] In *Boguch*, a property owner (Boguch) contracted with two real estate agents to sell his property.[25] The agents marketed the property, which included their posting of an aerial photograph on an MLS web site.[26] The photograph, however, misrepresented the property; it "depicted the property as being smaller in area and less uniform in shape than it actually was."[27] Although the property went unsold for several years—"more than two years passed after the realtors posted the

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[22] *Id.* at 771.
[23] *Id* at 771.
[24] 153 Wn App 595, 224 P 3d 795 (2009)
[25] *Boguch*, 153 Wn. App at 601.
[26] *Id* at 601-02.
[27] *Id.* at 602-03.

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photograph on the MLS website before anyone noticed the errors"—the mistake was eventually rectified and a sale occurred.[28]

Boguch brought a negligence claim against the real estate agents and their employer.[29] "Boguch alleged that the realtors were negligent in posting the inaccurate depiction of the property boundary lines on the Internet and that, but for their negligence, he would have sold the property sooner and for a higher price than he eventually did."[30] The defendants in *Boguch* moved for summary judgment.[31] They argued that Boguch could not establish that the defendants' obvious error proximately caused his damages.[32] Their arguments were based upon the rule prohibiting speculation and conjecture—that "[a]ny verdict in Boguch's favor ... would necessarily be based on speculation."[33] The King County Superior Court agreed with the defendants and granted their motion for summary judgment.[34] Boguch appealed.[35]

Division I upheld the order granting summary judgment.[36] In so doing, the court identified the threshold issue: "Boguch must show that, if the realtors had not posted the photograph erroneously depicting his property's boundary lines on the Internet, he would have sold the property on more favorable terms than he eventually did."[37] The court carefully

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[28] *Id.* at 603.
[29] *Id.* at 603.
[30] *Id* (emphasis added).
[31] *Id.*
[32] *Id.*
[33] *Id*
[34] *Id.* at 606.
[35] *Id.* at 608.
[36] *Id.* The court analogized Boguch's claims with professional negligence claims against an attorney *Id.* at 611-12. Those principles apply here since the fundamental question is the same: whether the plaintiff would have obtained a better result but for the defendant's negligence. *See Id.* at 611 (recognizing that "[t]he principles of proof and causation in a legal malpractice action usually do not differ from an ordinary negligence case) (citing *Daugert v. Pappas*, 104 Wn 2d 254, 257, 704 P.2d 600 (1985))
[37] *Boguch*, 153 Wn. App at 612.

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analyzed the evidence—which included the agents' obvious misrepresentation and testimony from prospective buyers—and concluded that Boguch's claims were barred by the rule prohibiting speculation and conjecture.[38] Specifically, the court found:

> That an alternative outcome might have been possible or that Boguch's theory may appear plausible in the abstract is insufficient to create a genuine issue on the element of proximate cause in this context. Boguch is required to produce evidence tending to show that a transaction different from the eventual conveyance would have occurred in the absence of the realtors' error.[39]

Plaintiff claims that an incomplete investigation by DSHS led to the failure to achieve his preferred outcome—separation or removal from his father's care during the period of Nov. 19 to Dec. 22, 2008. Thus, like the plaintiffs in *Bordon* and *Boguch*, Plaintiff was required to establish at trial that this different outcome would have occurred had DSHS obtained "complete" facts during its investigation.[40] Consequently, it was the Plaintiff's burden to establish specific, material fact(s) that would have been learned by DSHS had it conducted a complete investigation.[41]

Like the plaintiffs in *Bordon* and *Boguch*, the Plaintiff here did not meet that burden. Plaintiff's negligent investigation claim is based on five principal, undisputed facts: Ms. Lofgren (1) did not contact each physician and social worker who assessed Plaintiff's injuries, (2) did not interview Sarah Tate, Jacob Mejia, or Jacob's parents outside the presence of one

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[38] *Id.* at 612-15 ("Boguch [did] not meet [his] burden" since "[t]here [was] no evidence that, in the absence of the inaccurate photograph, the property would have sold within a certain price range, much less that a particular individual would have purchased the property for a particular price.").

[39] *Boguch*, 153 Wn. App at 614.

[40] *M.W v. Dep't of Soc. & Health Servs*, 149 Wn. 2d 589, 602, 70 P 3d 954, 960 (2003) (Attaching liability only when "DSHS has gathered incomplete or biased information that results in a harmful placement decision[.]") *See also* Section C for a more complete analysis of the implied action for negligent investigation.

[41] *See Petcu v State*, 121 Wn. App. 36, 53, 86 P 3d 1234 (2004) ("A material fact is one that would have changed the outcome of the court's decision"), citing *Tyner v Dep't of Social & Health Servs*, 92 Wn. App. 504, 518, 963 P.2d 215 (1998).

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another, (3) did not contact Sarah Tate's counselor, Kelly West, (4) did not consult with a second child abuse medical expert, [42] and (5) did not staff the case with a Child Protective Team ("CPT").[43] With the exception of Ms. West's counseling records, which are analyzed separately below, the Plaintiff's case-in-chief did not identify any specific, material fact that would have been learned by Ms. Lofgren had she completed actions (1), (2), (4) and (5), that were not already known to her or to Dr. Duralde, the child abuse Med-Con physican Ms. Lofgren was required to consult.

Ms. Lofgren testified that she did not contact Kelly West—action (3)—or obtain her counseling records as part of her investigation. Ms. West testified as to the contents of those records on October 2, 2013, indicating that between October 2006 and October 2008, she saw Sarah Tate approximately every other week for counseling sessions. The relevant counseling sessions began on July 17, 2007, when Sarah reported to Ms. West meeting Jacob for the first time. They end on October 2, 2008, the last time that Ms. West met with Sarah prior to Plaintiff's November 6, 2008 birth and his November 18, 2008 injury.[44] During these sessions, Ms. West testified that Sarah Tate reported the following about her relationship with Jacob:

> July 17, 2007: Sarah had a "new flame"—Jacob.
>
> July 31, 2007: Things were going well with Jacob.

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[42] As with the CPT, Plaintiff asserts this was necessary to resolve a "serious disagreement" among professionals (physicians) regarding the cause of his injury This contention is manufactured—there was no evidence of any treating physician's that he or she both reviewed Dr. Duralde's assessment and disagreed with her findings, or had even attempted on their own to determine the cause of the injury.

[43] Because DSHS has no duty regarding safety plans or voluntary services, Plaintiff's factual assertions related to the November 20, 2008 safety plan are not included in this section, but are addressed separately in Section C below

[44] Had Ms. Lofgren requested Ms West's records, no records beyond the October 2, 2008 record would have existed at the time.

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Aug. 31, 2007: Sarah and Jacob had decided to build their relationship slowly and weren't having sex.

Oct. 1, 2007: Jacob invited Sarah to a party at a beach and then "ditched her." Sarah's goal was to have a healthy relationship with Jacob but was afraid of being rejected by him.

Oct. 15, 2007: Sarah and Jacob had an "official" date where they went bowling. Sarah felt comfortable with Jacob and trusted him.

Oct. 29, 2007: Sarah and Jacob had been dating for three weeks. Her parents liked Jacob.

Nov. 12, 2007: Things were going well with Jacob and they were taking things more and more seriously. Sarah was concerned that Jacob was drinking and partying on the weekends.

Jan. 14, 2008: Things with Jacob were better and stronger and they had good communication. Jacob was supportive of Sarah going to school and placed a high value on education.

Jan. 28, 2008: Sarah appeared disheveled and had feelings of sadness after a brief pregnancy scare. She feared losing her relationship with Jacob because of it. Jacob was calm, cool and collected about it.

Feb. 11, 2008: Sarah and Jacob had been dating for four months. They had had arguments but were working on communicating. Jacob was supportive of Sarah going to school.

Feb. 26, 2008: Sarah had mixed emotions about Jacob. Jacob was becoming controlling, disrespectful, degrading, judgmental and aggressive.[45] Sarah had to seek permission to visit with a friend and felt she received "emotional punishment" from Jacob. Jacob considers Sarah to be "inferior" to him and can't tolerate being wrong.

March 11, 2008: Things were going better with Jacob but he "ditched" her one day. Jacob called her opinions "bullshit" and wouldn't discuss her opinions with her. Jacob is spending time with a friend that is a bad influence on him.[46] Sarah is pregnant.

[45] Ms. West characterized this as "verbal abuse."
[46] Ms. West characterized this as Sarah "rationalizing" Jacob's behavior.

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March 24, 2008: Jacob was angry that Sarah was sick with morning sickness, wanted sex,[47] and called her "boring" and belittled her. Jacob and Sarah had decided to tell his parents about her pregnancy.

April 7, 2008: Jacob's mother took the news of Sarah's pregnancy "okay," but his father had been upset, withdrawn and angry. Sarah's relationship with Jacob was a roller coaster. Jacob was breaking promises, inviting other girls to parties, and "drinking and drugging."

April 24, 2008: Jacob was rude, uncaring and unsupportive.[48] Sarah wanted Jacob to love her.

May 5, 2008: Sarah had resumed a friendship with a prior boyfriend (Andy) and Jacob found out and made a "scene" about it, belittled Sarah and demanded that she not speak to him or text message him. Jacob also wanted to start a "family" Facebook page with pictures of them. Jacob was being genuine.

May 19, 2008: Things were bad with Jacob but the last few days had been better. Jacob had been skipping school and lying, and blaming Sarah for everything. Jacob walked all over Sarah and Sarah forgave him. Sarah felt that Jacob didn't know how to be a father because he did not have a good role model, and that he didn't like kids because they were annoying and he didn't like to touch them. Sarah didn't see Jacob as being a good father. Sarah stayed at the Mejia's house while her father was in the hospital and felt like a stranger there.

June 16, 2008: There was an incident at Wal-Mart[49] "the other day" where Jacob and Sarah had been joking around inside the store and Jacob tripped her and pushed her to the ground and did not help her up. Jacob told Sarah he didn't mean to do it and Sarah believed it to be an accident. Jacob smoked weed and this is an "issue" for Sarah. Jacob was stressed and confused but Sarah did not feel she was in any danger.

Oct 2, 2008: Things with Jacob were "worse" and Sarah was forgiving him. When Sarah told Jacob that she wanted to be a counselor, he told

[47] Ms. West initially stated that Jacob was "demanding" sex On cross-examination she clarified that her records stated "wanting" sex instead.

[48] Ms West opined that Sarah "resists seeing [Jacob's] aggressiveness."

[49] Referred to herein as "the Wal-Mart Incident"

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her she would make a "shitty" one. Sarah wants to stay with Jacob so their baby will have two parents.[50]

Ms. Lofgren was present in court during Ms. West's testimony regarding these records. On direct examination, Plaintiff's counsel questioned Ms. Lofgren as to how her investigation would have been different had she known about the Wal-Mart Incident as testified to by Ms. West. In response, Ms. Lofgren indicated that she would have discussed this incident with Sarah and Jacob and may have offered additional voluntary services, but that the information contained in Ms. West's notes would not have been sufficient for DSHS to suggest Plaintiff be separated from Jacob, or to seek removal of the Plaintiff from his parent's care.[51]

In his opening argument, Plaintiff argued to the jury that "separation can be done without a dependency petition" and that "dependency wasn't necessary." Subsequently, the Plaintiff presented no evidence at trial from any witness that voluntary separation, if recommended by DSHS, would have been both feasible and agreed to by his caregivers. It is not DSHS' burden to establish this, and such speculation is insufficient to defeat a CR 50 motion.[52] Because voluntary placement (along with all other non-judicial provisions) are just that—voluntary—the only way to ensure that Jacob Mejia had no unsupervised contact with Plaintiff during the period of November 19 through Dec. 22, 2008 would have been through

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[50] Ms. West did not indicate that any of her records reflected that Sarah Tate was afraid or fearful of Jacob Within a month of her last appointment with Ms West (Oct 2, 2008) Sarah had moved in with Jacob and his family.

[51] Ms. Lofgren testified that voluntary separation of Jacob from Plaintiff was not something she would have recommended in this case, given the hearsay nature of the information contained in Ms. West's notes, the denial of any domestic violence history by Jacob and Sarah, and the assessment she received from Dr. Duralde that the injury was consistent with Jacob's story.

[52] During re-cross of Jonathan Lawson on October 8, 2013, the Plaintiff suggested there was no evidence that Jacob was asked if he would comply with supervised contact, or that he would not have agreed if asked. If it is Plaintiff's contention that Jacob would have complied with this measure if asked, he should have put forth this evidence in his case-in-chief. Plaintiff did not do this and consequently has not established the feasibility or probability of supervised contact with his father.

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court ordered removal. The Plaintiff did not offer any evidence that the legal constraints of separating a child from his parents did not apply to DSHS in his case, or that his separation or removal could nonetheless have occurred outside the confines of RCW 13.34.[53]

Further, during his case-in-chief the Plaintiff did not call an informed attorney to testify regarding the applicable legal standard for shelter care or dependency proceedings in Kitsap County in 2008, nor did he call a judicial officer to provide testimony regarding the likelihood of court ordered removal. The fact that these decision-makers are notably absent from Plaintiff's case only adds to the degree that the jury must speculate as to the possibility or probability that he could have been removed from his father's care.

Based on *Bordon, Boguch* and *Petcu*, the Plaintiff was required to establish at trial that additional, material facts would have been obtained by DSHS had it done a "complete" investigation, and consequently, he would not have been returned to the care of his father, thereby changing the course of events between November 19 and December 22, 2008. The Plaintiff did not present this evidence at trial. Therefore, the Plaintiff's case is based upon speculation, which is insufficient, as a matter of law, to defeat a CR 50 motion. Because there is no legally sufficient evidentiary basis for a reasonable jury to find DSHS liable, this court should grant a motion for judgment as a matter of law in favor of DSHS and dismiss Plaintiff's claims.

2. Plaintiff Did Not Establish That A Negligent Investigation Was The Legal Cause Of His Injury

[53] The "Juvenile Court Act—Dependency and Termination of Parent-Child Relationship."

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Legal causation "rests on policy considerations as to how far the consequences of a defendant's act should extend and involves a determination of whether liability should attach as a matter of law given the existence of cause in fact."[54] Legal causation is to be determined on "mixed considerations of logic, common sense, justice, policy, and precedent."[55]

In analyzing the legal causation element of proximate cause, this court must start with the premise that the decision by DSHS to return Plaintiff to the care of his parents was appropriate given (1) the legislature's finding that the parent-child bond is of paramount importance and (2) the lack of statutory basis for continued State intervention in instances of nonaccidental injury.

RCW 26.44, entitled "Abuse of Children," establishes that the parent-child bond is of great significance:

> The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian or guardian[.][56]

Intervention into this parent-child relationship may occur in limited instances where a child's health and well-being is at risk:

> [H]owever, in instances of non-accidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington

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[54] *See Hartley*, 103 Wn.2d at 777-779 (emphasis original).
[55] *Id.* (citations omitted).
[56] Former RCW 26.44.010 (2008), *amended by* Laws of 2012, ch. 259 § 12.

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> state legislature hereby provides for the reporting of such cases to the appropriate public authorities.[57]

Therefore, DSHS was required by law to return Plaintiff to his parents' care when its investigation did not establish a finding of physical abuse—"the nonaccidental infliction of physical injury."[58] After November 19, 2008, the right of Plaintiff and his parents to be reunited was superior to DSHS' right to intervene in their parent-child relationship by seeking continued separation or removal based on Plaintiff's November 18, 2008 accidental injury.

It is undisputed that DSHS obtained the following information in the course of its investigation at the time it released the 72-hour hold on November 19, 2008:

a. The names and ages of Plaintiff, Sarah Tate, Jacob Mejia and Kimberly Mejia (Ex. 40 – Intake Summary Report).

b. Sarah and Jacob's address in Kingston, and that it was the same address where the alleged incident of abuse occurred (Ex. 40 – Intake Summary Report).

c. That Jacob was attending Community Spectrum School (an alternative school) in Kingston (Ex. 40 – Intake Summary Report).

d. That Plaintiff was brought into the Harrison Medical Center Emergency Room on the evening of November 18, 2008. He was examined by Dr. Bill Moore, had a broken oblique mid-shaft humorous break in his left arm that was obvious on x-rays, was not using that arm, and that arm was swollen (Ex. 40 – Intake Summary Report).

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[57] *Id. See also* former RCW 13.34.020, *amended by* Laws of 2012 ch. 201 § 1, 2010 ch. 181 § 10; 2009 ch 454 § 2 relating to dependency proceedings ("The legislature declares that the family unit is a fundamental resource of American life which should be nurtured Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health or safety is jeopardized."); *see also In re Custody of Shields*, 157 Wn.2d 126, 142, 136 P.3d 117 (2006) ("[g]reat deference is accorded to parental rights, based upon constitutionally protected rights to privacy and the goal of protecting the family entity").

[58] Former WAC 388-15-009(1) (2008) (emphasis added); *see also* former RCW 26.44.010 (2008), *amended by* Laws of 2012, ch. 259 § 12 (quoted immediately above).

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e. That Plaintiff was seen at an appointment on Nov. 17, 2008 (the day prior) and the injury to his arm had not been reported at that visit (Ex. 40 – Intake Summary Report).

f. That Jacob said Plaintiff was passed around at a wedding two days prior and maybe the injury had happened at that time (Ex. 40 – Intake Summary Report).

g. That Sarah said "don't be mad" but that when she had fed Plaintiff on the morning of Nov. 18, 2008, Jacob had swaddled Plaintiff and Sarah thought that Plaintiff was injured when Jacob did that (Ex. 40 – Intake Summary Report).

h. That Dr. Moore at Harrison Medical Center thought that Jacob and Sarah's explanations were inconsistent with the seriousness and severity of Plaintiff's injury (Ex. 40 – Intake Summary Report).

i. That Plaintiff was placed in protective custody prior to being transported from Harrison Medical Center to Mary Bridge Children's Hospital, and that Mary Bridge Children's Hospital had admitted Plaintiff and was aware he was in protective custody (Ex. 40 – Intake Summary Report).

j. That Sarah was involved in one prior CPS referral where she was listed as the victim and her father as her primary caretaker (Ex. 40 – Intake Summary Report).

k. That Plaintiff seemed normal and well cared for (Ex. 40 – Intake Summary Report).

l. That Plaintiff was Jacob and Sarah's first child (Ex. 40 – Intake Summary Report).

m. That Jacob, Sarah and Plaintiff lived with Kimberly Mejia (Ex. 40 – Intake Summary Report).

n. That Kimberly Mejia did not know what could have happened to Plaintiff either (Ex. 40 – Intake Summary Report).

o. That Sarah gets TANIF (Ex. 40 – Intake Summary Report).

p. That Kitsap County Sheriff Deputy Tufts had come to the Harrison Medical Center Emergency Room and was investigating (Ex. 40 – Intake Summary Report).

q. That Nicki Miller was the social worker at Harrison Medical Center who had made the referral to Child Protective Services (Ex. 40 – Intake Summary Report).

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r. That there was a suspicion of physical abuse because Jacob and Sarah's explanations for Plaintiff's injury were inconsistent with the severity of the injury (Ex. 40 – Intake Summary Report).

s. That there was no history of abuse by Sarah or Jacob (Ex. 40 – Intake Summary Report).

t. That Jacob and Sarah seemed confused about how the injury happened (Ex. 40 – Intake Summary Report).

u. That Sarah had a history of experimenting with marijuana and drinks rarely (Ex. 31, p. 1 – Case Notes).

v. That Plaintiff was born negative for any drugs (Ex. 31, p. 1 – Case Notes).

w. That Sarah and Jacob had a supportive family and were living with Jacob's family (Ex. 31, p. 1 – Case Notes).

x. That Sarah's parents were divorced and she was receiving counseling to deal with this (Ex. 31, p. 1 – Case Notes).

y. That neither Sarah nor Jacob had any diagnosed mental health history (Ex. 31, p. 1 – Case Notes).

z. That both Sarah and Jacob seemed like normal, functioning adults (Ex. 31, p. 1-2 – Case Notes).

aa. That after Plaintiff's birth Sarah and Jacob made a follow up appointment with Dr. Al-Agba (Ex. 31, p. 2 – Case Notes).

bb. That Jacob and Sarah slept with Plaintiff in his Mary Bridge Children's Hospital room on the night of November 18, 2008, demonstrated appropriate concern, and were asking appropriate questions (Ex. 31, p. 2 – Case Notes).

cc. That Jacob's parents, Bernard and Kimberly Mejia were asking appropriately concerning questions about Plaintiff's injury (Ex. 31, p. 3 – Case Notes).

dd. That neither Sarah, Jacob, nor Kimberly Mejia had any criminal history of arrests or convictions (Ex. 31, p. 5 – Case Notes).

ee. That Dr. Duralde had completed an examination of Plaintiff and an interview of Jacob and Sarah, including receiving a demonstration of the swaddling, and had concluded the following: Jacob was telling

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> the truth regarding what had happened to Plaintiff, Jacob had demonstrated swaddling Plaintiff with his arm behind his back; Jacob's story of what had happened was consistent with Plaintiff's injury; Jacob and Sarah are young but were asking appropriately concerning questions; Jacob and Sarah were observed by Dr. Duralde to be acting appropriately in interacting with and handling Plaintiff; and that Sarah and Jacob were remorseful and appropriately concerned. (Ex. 31, p. 6 – Case Notes).

Additionally, it is undisputed that Dr. Duralde, the child abuse Med-Con physican Ms. Lofgren was required to consult with as part of her investigation, reviewed or obtained the following information as part of her assessment:[59]

a. Records of Dr. Moore's assessment of Plaintiff at Harrison Medical Center on Nov. 18, 2008 (Ex. 11).

b. Social worker Nicki Miller's Social Work Consultation at Harrison Medical Center on Nov. 18, 2008 (Ex. 12).

c. Records of Dr. Silas' assessment of Plaintiff at Mary Bridge Children's Hospital on November 19, 2008 (Ex. 1).

d. Records of Dr. Parle's assessment of Plaintiff at Mary Bridge Children's Hospital on November 19, 2008 (Ex. 1).

e. Skeletal X-rays of Plaintiff taken at Mary Bridge Children's Hospital on November 19, 2008 (Ex. 3).

f. Skeletal X-rays of Plaintiff taken at Harrison Medical Center on November 18, 2008 (Ex. 4).

g. Records of Dr. Bullard-Berent's assessment of Plaintiff at Mary Bridge Children's Hospital on November 18, 2008 (Ex. 6).

h. Records of Dr. Spence's assessment of Plaintiff at Mary Bridge Children's Hospital on November 19, 2008 (Ex. 7).

[59] *See* deposition testimony of Dr Duralde; Ex 45

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i. Records of Dr. Neilson's assessment of Plaintiff at Mary Bridge Children's Hospital on November 19, 2008.

j. Laboratory results for Vitamin D, parathyroid hormone, and comprehensive metabolic panel (Ex. 45).

k. Head-to-toe physical exam of Plaintiff (Ex. 45).

l. Face-to-face interview with Jacob and Sarah (Ex. 45).

m. Demonstration of swaddling on a doll (of how he swaddled Plaintiff) by Jacob (Ex. 45).

Legal causation does not attach as a matter of law given DSHS' investigatory actions and conclusions. All of the actors implicated in the investigation of Plaintiff's November 18, 2008 injury had the legal obligation not to intervene in Plaintiff's relationship with his parents in the absence of verified information demonstrating a nonaccidental injury to Plaintiff by his father.[60]

A jury should not be allowed to substitute its own judgment for that of the Washington Legislature's in statutorily limiting the circumstances in which DSHS may intervene in the protected parent-child relationship. It defies logic, common sense, justice, and policy to allow the jury to second-guess DSHS placement or removal decisions, especially when the Plaintiff has not established a legal construct that would allow for the same. In allowing this case to go to a jury, the court opens the door to liability being imposed on DSHS in instances in which it seeks to act accordingly with the legislative and statutory mandates of RCW Chapters 26.44 and 13.34 by electing not to pursue removal in every case of accidental injury to a child.

[60] *See* WAC 388-15-009(1) (2008); former RCW 26 44 010 (2008), *amended by* Laws of 2012, ch. 259 § 12, former RCW 13.34.020, *amended by* Laws of 2012 ch. 201 § 1; 2010 ch. 181 § 10; 2009 ch. 454 § 2.

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C. Plaintiff's Negligent Safety Plan Claim Fails For Lack of Statutory, Common Law, or Implied Duty

Causes of action for the negligence of DSHS investigators are strictly limited to the narrow exception when, during a child abuse or neglect investigation conducted pursuant to RCW 26.44.050, "DSHS has gathered incomplete or biased information that results in a harmful placement decision such as removing a child from a non-abusive home, placing a child in an abusive home or letting a child remain in an abusive home."[61]

1. There Is No Recognized Claim For Negligent Safety Plan

The court in *M.W* expressly declined to expand the cause of action against DSHS investigators beyond the bounds described above, because the statute (RCW 26.44) from which the tort is implied, does not contemplate other types of harms:[62]

> A careful reading of the statute's statement of purpose gives no indication that when the legislature created the duty to investigate child abuse, it contemplated protecting children from all physical or emotional injuries that may come to them directly from the negligence of DSHS investigators. Because the cause of action of negligent investigation originates from the statute, it is necessarily limited to remedying the injuries the statute was meant to address.
>
> [The plaintiff] claims the purpose of the statute is to protect children from all harm. [The plaintiff] and WSTLA Foundation argue language from chapter 26.44 RCW supports finding a wider purpose of protecting children generally. For example, RCW 26.44.010 states that '[i]t is the intent of the legislature that, as a result of [reported abuse], protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children....' When this language is read in light of the passage from the same statute quoted

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[61] *Tyner v Wash Dep't. of Soc & Health Servs.*, 141 Wn.2d 68, 77-82, 1 P 3d 1148 (2000), *M W*, 149 Wn 2d at 602.

[62] The *M.W.* court was applying the *Bennett* test to determine whether an implied cause of action was warranted, analyzing (1) whether the plaintiff is within the class of persons for whose benefit the statute was enacted; (2) whether the legislative intent supports creating a remedy, and (3) whether the underlying purpose of the legislation is consistent with inferring a remedy *Id* at 596 (citing *Bennett v. Hardy*, 113 Wn 2d 912, 920, 784 P.2d 1258 (1990)).

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> above however, it becomes apparent that WSTLA Foundation takes this general language out of the context of the specific harms the legislature intended to remedy—unnecessary violation of the integrity of the family and abuse of children within the family.
>
> [The plaintiff] and WSTLA Foundation also argue that general statements of intent to protect children from other statutes support an expansive duty of care to protect children from all harm. [The plaintiff] and WSTLA Foundation, however, provide no support for the contention that we must look to other statutes to determine the purpose of the statute that implies the cause of action.[63]

The Plaintiff asks this jury to award him damages based on the alleged negligence of Ms. Lofgren in failing to provide and implement an "adequate" safety plan.[64] As noted above, in *M.W* the Washington Supreme Court specifically rejected the contention that RCW 26.44.010's statement of intent regarding "protective services" being "made available in an effort to prevent further abuses" supported a more expansive duty of care to protect children from all types of harm by DSHS investigators.[65]

One of the first rules of statutory construction is that the construction must not lead to "unlikely, absurd, or strained consequences."[66] DSHS offers voluntary services to parents consistent with RCW 26.44's reunification goals, not as part of its duty to investigate allegations of child abuse and neglect and remove children from dangerous homes. It does not logically flow from RCW 26.44.050 that DSHS has assumed an actionable duty to ensure that

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[63] *M W*, 149 Wn. 2d at 598 (internal citations omitted).

[64] *See* Plaintiff's Amended Complaint, ¶ 4.4.5 ("DSHS did not adequately follow-up and failed to provide an adequate safety plan for Aiden. DSHS took no actions to follow-up, set up, or require counseling and parenting classes."); ¶ 4 4 7 ("DSHS breached the duty of care it owed to Plaintiffs when...DSHS negligently failed to supervise, review, check, create a safety plan, or otherwise monitor its placement."), Plaintiff's Opening Argument, Slide "OPEN 1," Sept 18, 2013 ("Why is CPS Being Sued?". "Chose not to follow up or provide services or monitoring that were needed and promise [*sic*]")

[65] *M W.*, 149 Wn. 2d at 598 (citing former RCW 26.44.010 (2008), *amended by* Laws of 2012, ch. 259 § 12).

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safety plans are implemented and monitored. If the Court interprets RCW 26.44.050 to create an actionable duty, then parents and children could sue DSHS each time it enters into a safety and/or service plan and a child in that home is subsequently injured. There is no precedent for such expansive liability. It would be poor public policy to make DSHS liable when voluntary safety plans are not effective or successful in protecting children. Were this the case, DSHS would be discouraged from creating safety plans and making recommendations it believes would enhance child safety and improve caregiver parenting skills.

Unless instructed otherwise, the Plaintiff will argue to the jury that DSHS (1) had a duty to implement a safety plan upon reuniting him with his parents, (2) that the safety plan implemented fell below a particular standard of care, (3) that DSHS had a duty to monitor or supervise his parents' compliance with the voluntary services offered in the safety plan, and (4) that DSHS' failure to do so proximately caused his injuries. The Plaintiff should be barred from making this argument and the jury instructed there is no duty or action for damages related to the safety plan or voluntary services.

2. Even If The Court Permitted Such Claim, Evidence Of Causation is Lacking

Plaintiff's safety plan was not part of the investigation that allegedly resulted in "letting [Plaintiff] remain in an abusive home."[67] It is undisputed that DSHS made the determination on November 19, 2008 to lift the 72-hour hold and allow Plaintiff to return home to the care of his parents.[68] Plaintiff's caregivers agreed to voluntary services, documented in a safety plan

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[67] *Id.*

[68] *See* Ex 32, p. 4 of 51, documenting DSHS' Nov. 19, 2008 determination to remove the police hold and return Plaintiff to his parents. *See also* testimony of Jonathan Lawson that the investigation was concluded on

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during a home visit on November 20, 2008. Subsequently, Plaintiff's case remained open for DSHS administrative purposes only—to finish outstanding paperwork.[69] It remained open as of December 23, 2008, when DSHS received the referral for Plaintiff's December 22, 2008 injury and assigned the same to Ms. Lofgren to initiate a new investigation.

Nonetheless, even if this court were inclined to expand the duty of DSHS in the instant case, this jury would again be left to speculate that the voluntary services offered to Plaintiff's parents—a public health nurse referral and parenting classes—would have prevented Plaintiff's injury.

The evidence provided at trial by Plaintiff in this regard amounts to pure conjecture. The Plaintiff's own child abuse expert—Dr. Carole Jenny—testified on September 26, 2013 that she was "speculating" as to any specific benefit a public health nurse would have had, or whether the public health nurse could have "changed the life course" of Plaintiff's family.[70] Dr. Jenny testified similarly when asked about the parenting classes identified on the safety plan—whether Jacob or Sarah's attendance at parenting classes would have "not caused" the Plaintiff's injury would depend on the nature of the classes as well as the skill of the particular instructor.

At trial, the Plaintiff was required to establish that (1) had DSHS ensured a public health nurse referral was made, or (2) had DSHS ensured Jacob's attendance at parenting

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November 19, 2008—all of the pertinent information had been gathered, but documentation of the investigation (paperwork) had not yet been completed.

[69] Ms Lofgren testified that on December 2, 2008, she was directed by Jonathan Lawson, her supervisor, to finish her paperwork because "the investigation had been completed."

[70] Jonathan Lawson also testified on October 7, 2013 that in his experience a public health nurse's time spent with a family was typically limited to visits once per month or every other week for a duration of one half hour to one hour per visit.

classes, his injury on December 22, 2008 would not have occurred. The Plaintiff did not present this evidence at trial and the law does not permit speculative testimony to overcome a CR 50 motion. Because there is no legally sufficient evidentiary basis for a reasonable jury to find DSHS liable for damages resulting from a safety plan or voluntary services, this court should grant a motion for judgment as a matter of law.

III. CONCLUSION

For the foregoing reasons, Defendant Washington State Department of Social and Health Services moves for a judgment as a matter of law under CR 50(a) and dismissal of the claims against it.

DATED this 9th day of October, 2013.

ROBERT W. FERGUSON
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PROOF OF SERVICE

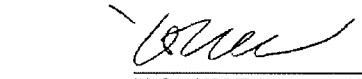
I hereby declare that on this 9th day of October, 2013, I served a copy of this document on all parties or their counsel of record on as follows:

☒ Hand Delivered

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 9th day October, 2013, at Tacoma, WA.

ROBERT W. FERGUSON
Attorney General



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Appendix B

Court's Instructions

INSTRUCTION NO. 3

The Plaintiff claims that the State of Washington, through its departments and divisions, negligently investigated the November 18, 2008 child abuse referral regarding Aiden Barnum and as a result Aiden Barnum was injured.

Plaintiff claims that Defendant's conduct was a proximate cause of Aiden Barnum's injuries and damages which occurred after November 18, 2008.

Defendant denies Plaintiff's claims and further denies the nature and extent of Plaintiff's claimed injuries and damages.

Defendant claims as a defense that if there are injuries as claimed, only Jacob Mejia caused injury to Plaintiff.

INSTRUCTION NO. 10

The State of Washington through its divisions or departments, must conduct a reasonable investigation of a report of potential child abuse. A claim against Defendant DSHS for negligent investigation is available when DSHS conducts a negligent investigation that results in a harmful placement decision.

Defendants Proposed Instructions

DEFENDANT'S PROPOSED INSTRUCTION NO. 20

The Department of Social and Health Services may only be liable for a negligent investigation if:

(1) DSHS received a report of child abuse and neglect,

(2) DSHS gathered incomplete or biased information investigating the report, and

(3) The investigation resulted in a harmful placement decision.

A harmful placement decision must be either:

(1) Removal of a child from a non-abusive parent, guardian, or legal custodian,

(2) Placement of a child in an abusive home, or

(3) Allowing a child to remain in an abusive home.

The Department of Social and Health Services does not have a duty to protect children from all forms of abuse and neglect.

RCW 26.44.050
Tyner v. DSHS, 141 Wn.2d 68, 81, 1; P.3d 1148 (2000);
M.W. v. DSHS, 149 Wn.2d 589, 599-602, 70 P.3d 954 (2003);
Braam v. State, 150 Wn.2d 689, 711-12, 81 P.3d 851 (2003);
Aba Sheikh v. Choe, 156 Wn.2d 441, 457-58, 128 P.3d 574 (2006);
DeWater v. State, 130 Wn.2d 128, 139-40, 921 P.2d 1059 (1996);
Beltran v. DSHS, 98 Wn. App. 245, 255, 989 P.2d 604 (1999);
Terrell C. v. State, 120 Wn. App 20, 28, 84 P.3d 899 (2004).

DEFENDANT'S PROPOSED INSTRUCTION NO. 37

A State statute provides that upon receipt of a report concerning the possible occurrence of abuse or neglect of a child the Defendant DSHS must investigate. A claim against the Defendant DSHS for negligent investigation is only available when DSHS conducts a biased or incomplete investigation that results in a harmful placement decision.

RCW 26.44.050
M.W. v. DSHS, 149 Wn.2d 589, 599-602, 70 P.3d (2003)

Plaintiff's Proposed Instructions

INSTRUCTION NO. 3

(1) Plaintiff Aiden Barnum claims that the Defendant State Washington was negligent in performing its investigation of child abuse against Aiden Barnum when he was twelve (12) days old, and failing to adequately follow-up during its investigation, in the following respects:

a) Failing to gather available information;

b) Failing to contact health care providers who made the referral to CPS;

c) Failing to contact other health care providers who treated Aiden Barnum;

d) Failing to learn about or consider the differences of opinion among the health care providers;

e) Failing to follow the mandate of Executive Order 95-04 and request a Child Protective Team to evaluate Aiden's situation before his return home;

f) Failing to provide a Safety Plan in compliance with the policies and procedures of CPS, and failing to implement or follow-through with a Safety Plan for Aiden's safety and protection;

g) Failing to create a Safety Plan which required separation of Aiden from his father or requiring any contact between Aiden and his father to be supervised;

h) Failing to contact appropriate collateral contacts;

i) Failing to contact and retain a public health nurse or other independent monitor;

j) Failing to follow-up with, monitor, or have regular contact with Aiden or his family;

k) Failing to have any contact with Aiden or his family for five weeks following Aiden's fractured arm; and,

l) Failing to provide adequate supervision over the investigation.

Plaintiff claims that Defendant's conduct was a proximate cause of Aiden Barnum's injuries and damages which occurred after November 18, 2008.

(2) Defendant denies Plaintiff's claims and further denies the nature and extent of Plaintiff's claimed injuries and damages.

(3) The foregoing is merely a summary of the claims of the parties. You are not to consider the summary as proof of the matters claimed unless admitted by the opposing party; and you

are to consider only those matters that are admitted or are established by the evidence. These claims have been outlined solely to aid you in understanding the issues.

Source: WPI 20.01; 20.05

INSTRUCTION NO. 12

A Washington statute states: The Department of Social and Health Services, through its divisions or departments, must conduct a reasonable investigation of a report of potential child abuse.

The State must perform a reasonable investigation prior to making a placement decision to remove a child from a home, to allow a child to remain in a home, or to return a child to his home. The failure to conduct a reasonable investigation is negligence.

Source: RCW 26.44.050; M.W. v. Department of Social and Health Services, 149 Wn.2d 589, 595, 70 P.3d 954 (2003).

INSTRUCTION NO. 13

An executive order signed by Governor Mike Lowry on July 27, 1995, and a Washington statute state:

The Department of Social and Health Services shall utilize multidisciplinary community protection teams, to work with the department to make the best decisions possible to protect and improve the lives of children, as follows:

1) In all child protection cases in which the risk assessment results in a "moderately high" or "high" risk classification, and the child is age six years or younger;

2) In all child protection cases where serious professional disagreement exists about a risk of death or serious injury;

3) In all child protection cases that are opened on the basis of "imminent harm;" and

4) In all complex child protection cases where such consultation will help improve outcomes for children.

Source: Executive Order 95-04 (7/27/1995); RCW 74.14B.030

INSTRUCTION NO. 15

A CPS internal governmental policy states:

CPS must utilize Child Protection Teams to assist in the assessment of the future risk of abuse and neglect to children when any of the situations outlined below exist:

1. Any case in which there is serious professional disagreement, including disagreement by the foster parent(s), regarding risk of death, serious injury, out-of-home placement of a child, or the child's return home as a result of a decision to leave a child in the home or to return the child to the home; The CPT may be told the facts and may opt not to review the situation, on a case-by-case basis;
2. Cases in which the risk assessment, following initial investigation, results in a moderately high or high risk classification, and the child victim is age six or younger;
3. In all cases prior to return home or dismissal of dependency, when the child is age six or younger and any risk assessment has resulted in a risk level of moderately high or high risk;
4. Cases that are opened solely on the basis of risk of imminent harm following initial investigation where there are no allegations of abuse or neglect; and/or

5. Complex cases where such consultation will help improve outcomes for children.

Source: CPS Practice and Procedure Guide (2008 ed.), section 2562(A)

INSTRUCTION NO. 16

A CPS internal governmental policy states:

Any child who has an indication safety threat on the safety assessment must have a Safety plan in place. The safety plan must include:

1. Separation of the child from the person who poses the safety threat.
2. Independent safety monitors such as regular contact by a mandated reporter aware of the safety threat and understands their reporting duty. Plans based mainly on promises made by the caregiver are not appropriate.
3. A caregiver who will assure protection of the child.
4. Regular contact by the social worker with all parties in the safety plan.

Source: CPS Practice and Procedure Guide (2008 ed.), section 2331(E)(d)

INSTRUCTION NO. 17

The violation, if any, of a statute, administrative rule, regulation, executive order, or internal governmental policy is not necessarily negligence, but may be considered by you as evidence in determining negligence.

Source: WPI 60.03 (modified)

Instruction No. 31

A Child Protective Service Policy and Procedure states:

Any child who has an indication safety threat on the safety assessment must have a safety plan in place. The safety plan must include:

- Separation of the child from the person who poses the safety threat.
- Independent safety monitors such as regular contact by a mandated reporter aware of the safety threat and understands their reporting duty. Plans based mainly on promises made by the caregiver are not appropriate.
- A caregiver who will assure protection of the child.
- Regular contact by the social worker with all parties in the safety plan.

Source: DSHS Practice and Procedure Guide, Ch.2, Section 2331(E)(d) (December 2008 Ed.)

INSTRUCTION NO. 34

(1) Plaintiff Aiden Barnum claims that the Defendant State Washington was negligent in performing its investigation of child abuse against Aiden Barnum when he was twelve (12) days old, and failing to adequately follow-up during its investigation, in the following respects:

a) Failing to protect the safety of Aiden Barnum during its open investigation;

b) Failing to gather available information;

c) Failing to contact health care providers who made the referral to CPS;

d) Failing to contact other health care providers who treated Aiden Barnum;

e) Failing to learn about or consider the differences of opinion among the health care providers;

f) Failing to follow the mandate of Executive Order 95-04 and request a Child Protective Team to evaluate Aiden's situation before his return home and failing to follow CPS policies and procedures regarding the need for a Child Protective Team;

g) Failing to provide a Safety Plan in compliance with the policies and procedures of CPS, and failing to implement or follow-through with a Safety Plan for Aiden's safety and protection;

h) Failing to create a Safety Plan which required separation of Aiden from his father or requiring any contact between Aiden and his father to be supervised;

i) Failing to contact appropriate collateral contacts;

j) Failing to contact and retain a public health nurse or other independent monitor;

k) Failing to follow-up with, monitor, or have regular contact with Aiden or his family;

l) Failing to have any contact with Aiden or his family for five weeks following Aiden's fractured arm; and,

m) Failing to provide adequate supervision over the investigation.

Plaintiff claims that Defendant's conduct was a proximate cause of Aiden Barnum's injuries and damages which occurred after November 18, 2008.

(2) Defendant denies Plaintiff's claims and further denies the nature and extent of Plaintiff's claimed injuries and damages.

(3) The foregoing is merely a summary of the claims of the parties. You are not to consider the summary as proof of the matters claimed unless admitted by the opposing party; and you are to consider only those matters that are admitted or are established by the evidence. These claims have been outlined solely to aid you in understanding the issues.

Source: WPI 20.01; 20.05

Statutes

RCW 4.24.595

Liability immunity — Emergent placement investigations of child abuse or neglect — Shelter care and other dependency orders.

(1) Governmental entities, and their officers, agents, employees, and volunteers, are not liable in tort for any of their acts or omissions in emergent placement investigations of child abuse or neglect under chapter 26.44 RCW including, but not limited to, any determination to leave a child with a parent, custodian, or guardian, or to return a child to a parent, custodian, or guardian, unless the act or omission constitutes gross negligence. Emergent placement investigations are those conducted prior to a shelter care hearing under RCW 13.34.065.

(2) The department of social and health services and its employees shall comply with the orders of the court, including shelter care and other dependency orders, and are not liable for acts performed to comply with such court orders. In providing reports and recommendations to the court, employees of the department of social and health services are entitled to the same witness immunity as would be provided to any other witness.

[2012 c 259 § 13.]

Notes:

Family assessment response evaluation -- Family assessment response survey -- 2012 c 259: See notes following RCW 26.44.260.

and the judgment shall not become a lien upon any property of such officer, employee, or volunteer. [1989 c 413 § 2.]

4.92.080 Bond not required of state. No bond shall be required of the state of Washington for any purpose in any case in any of the courts of the state of Washington and the state of Washington shall be, on proper showing, entitled to any orders, injunctions and writs of whatever nature without bond notwithstanding the provisions of any existing statute requiring that bonds be furnished by private parties. [1935 c 122 § 1; RRS § 390-3.]

4.92.090 Tortious conduct of state—Liability for damages. The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. [1963 c 159 § 2; 1961 c 136 § 1.]

4.92.100 Tortious conduct of state or its agents—Claims—Presentment and filing—Contents. All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct shall be presented to and filed with the risk management division. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim or if the claimant is a minor, or is a nonresident of the state, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

With respect to the content of such claims this section shall be liberally construed so that substantial compliance will be deemed satisfactory. [2006 c 82 § 1; 2002 c 332 § 12; 1986 c 126 § 7; 1979 c 151 § 3; 1977 ex.s. c 144 § 2; 1967 c 164 § 2; 1963 c 159 § 3.]

Intent—Effective date—2002 c 332: See notes following RCW 43.41.280.

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Puget Sound ferry and toll bridge system, claims against: RCW 47.60.250.

4.92.110 Tortious conduct of state or its agents—Presentment and filing of claim prerequisite to suit. No action shall be commenced against the state, or against any state officer, employee, or volunteer, acting in such capacity, for damages arising out of tortious conduct until sixty days have elapsed after the claim is presented to and filed with the risk management division. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period. [2006 c 82 § 2; 2002 c 332 § 13; 1989 c 419 § 14; 1986 c 126 § 8; 1979 c 151 § 4; 1977 ex.s. c 144 § 3; 1963 c 159 § 4.]

Intent—Effective date—2002 c 332: See notes following RCW 43.41.280.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.120 Tortious conduct of state—Assignment of claims. Claims against the state arising out of tortious conduct may be assigned voluntarily, involuntarily, and by operation of law to the same extent as like claims against private persons may be so assigned. [1963 c 159 § 5.]

4.92.130 Tortious conduct of state—Liability account—Purpose. A liability account in the custody of the treasurer is hereby created as a nonappropriated account to be used solely and exclusively for the payment of liability settlements and judgments against the state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of its officers, employees, and volunteers and all related legal defense costs.

(1) The purpose of the liability account is to: (a) Expeditiously pay legal liabilities and defense costs of the state resulting from tortious conduct; (b) promote risk control through a cost allocation system which recognizes agency loss experience, levels of self-retention, and levels of risk exposure; and (c) establish an actuarially sound system to pay incurred losses, within defined limits.

(2) The liability account shall be used to pay claims for injury and property damages and legal defense costs exclusive of agency-retained expenses otherwise budgeted.

(3) No money shall be paid from the liability account, except for defense costs, unless all proceeds available to the claimant from any valid and collectible liability insurance shall have been exhausted and unless:

(a) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or

(b) The claim has been approved for payment.

(4) The liability account shall be financed through annual premiums assessed to state agencies, based on sound actuarial principles, and shall be for liability coverage in excess of agency-budgeted self-retention levels.

(5) Annual premium levels shall be determined by the risk manager, with the consultation and advice of the risk management advisory committee. An actuarial study shall be conducted to assist in determining the appropriate level of funding.

(6) Disbursements for claims from the liability account shall be made to the claimant, or to the clerk of the court for judgments, upon written request to the state treasurer from the risk manager.

(7) The director may direct agencies to transfer moneys from other funds and accounts to the liability account if premiums are delinquent.

(8) The liability account shall not exceed fifty percent of the actuarial value of the outstanding liability as determined annually by the risk management division. If the account exceeds the maximum amount specified in this section, premiums may be adjusted by the risk management division in order to maintain the account balance at the maximum limits. If, after adjustment of premiums, the account balance remains above the limits specified, the excess amount shall be prorated back to the appropriate funds. [2002 c 332 § 14; 1999 c 163 § 1; 1991 sp.s. c 13 § 92; 1989 c 419 § 4; 1985 c

law enforcement officer acting in good faith pursuant to this chapter is immune from civil or criminal liability for such action.

(2) A person with whom a child is placed pursuant to this chapter and who acts reasonably and in good faith is immune from civil or criminal liability for the act of receiving the child. The immunity does not release the person from liability under any other law. [1996 c 133 § 13; 1995 c 312 § 8; 1986 c 288 § 2; 1981 c 298 § 5; 1979 c 155 § 21.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Severability—1986 c 288: See note following RCW 13.32A.050.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.080 Unlawful harboring of a minor—Penalty—Defense—Prosecution of adult for involving child in commission of offense. (1)(a) A person commits the crime of unlawful harboring of a minor if the person provides shelter to a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent's permission, and if the person intentionally:

(i) Fails to release the minor to a law enforcement officer after being requested to do so by the officer; or

(ii) Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the officer, if the person knows the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location; or

(iii) Obstructs a law enforcement officer from taking the minor into custody; or

(iv) Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer.

(b) It is a defense to a prosecution under this section that the defendant had custody of the minor pursuant to a court order.

(2) Unlawful harboring of a minor is punishable as a gross misdemeanor.

(3) Any person who provides shelter to a child, absent from home, may notify the department's local community service office of the child's presence.

(4) An adult responsible for involving a child in the commission of an offense may be prosecuted under existing criminal statutes including, but not limited to:

(a) Distribution of a controlled substance to a minor, as defined in RCW 69.50.406;

(b) Promoting prostitution as defined in chapter 9A.88 RCW; and

(c) Complicity of the adult in the crime of a minor, under RCW 9A.08.020. [2000 c 123 § 9; 1994 sp.s. c 7 § 507; 1981 c 298 § 6; 1979 c 155 § 22.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.082 Providing shelter to minor—Requirement to notify parent, law enforcement, or department. (1) Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home without the permission of the parent, or other lawfully prescribed residence, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department. The report may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family. [2000 c 123 § 10; 1996 c 133 § 14; 1995 c 312 § 34.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.084 Providing shelter to minor—Immunity from liability. If a person provides the notice required in RCW 13.32A.082, he or she is immune from liability for any cause of action arising from providing shelter to the child. The immunity shall not extend to acts of intentional misconduct or gross negligence by the person providing the shelter. [1995 c 312 § 36.]

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.086 Duty of law enforcement agencies to identify runaway children under RCW 43.43.510. Whenever a law enforcement agency receives a report from a parent that his or her child, or child over whom the parent has custody, has without permission of the parent left the home or residence lawfully prescribed for the child under circumstances where the parent believes that the child has run away from the home or the residence, the agency shall provide for placing information identifying the child in files under RCW 43.43.510. [1995 c 312 § 37.]

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.090 Duty to inform parents—Transportation to child's home or out-of-home placement—Notice to department. (1) The administrator of a designated crisis residential center or the department shall perform the duties under subsection (3) of this section:

(a) Upon admitting a child who has been brought to the center by a law enforcement officer under RCW 13.32A.060;

(b) Upon admitting a child who has run away from home or has requested admittance to the center;

Effective date—2000 c 162 §§ 11-17: See note following RCW 13.32A.060.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Intent—1990 c 276: See RCW 13.32A.015.

Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.140 Out-of-home placement—Child in need of services petition by department—Procedure. Unless the department files a dependency petition, the department shall file a child in need of services petition to approve an out-of-home placement on behalf of a child under any of the following sets of circumstances:

(1) The child has been admitted to a crisis residential center or has been placed by the department in an out-of-home placement, and:

(a) The parent has been notified that the child was so admitted or placed;

(b) The child cannot return home, and legal authorization is needed for out-of-home placement beyond seventy-two hours;

(c) No agreement between the parent and the child as to where the child shall live has been reached;

(d) No child in need of services petition has been filed by either the child or parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

(2) The child has been admitted to a crisis residential center and:

(a) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such placement;

(b) The staff, after searching with due diligence, have been unable to contact the parent of such child; and

(c) The child has no suitable place to live other than the home of his or her parent.

(3) An agreement between parent and child made pursuant to RCW 13.32A.090(3)(d)(ii) or pursuant to RCW 13.32A.120(1) is no longer acceptable to parent or child, and:

(a) The party to whom the arrangement is no longer acceptable has so notified the department;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No new agreement between parent and child as to where the child shall live has been reached;

(d) No child in need of services petition has been filed by either the child or the parent;

(e) The parent has not filed an at-risk youth petition; and

(f) The child has no suitable place to live other than the home of his or her parent.

Under the circumstances of subsections (1), (2), or (3) of this section, the child shall remain in an out-of-home placement until a child in need of services petition filed by the department on behalf of the child is reviewed and resolved by the juvenile court. The department may authorize emergency medical or dental care for a child admitted to a crisis residential center or placed in an out-of-home placement by the department. The state, when the department files a child in need of services petition under this section, shall be represented as provided for in RCW 13.04.093. [2000 c 123 § 16; 1997 c 146 § 5; 1996 c 133 § 19; 1995 c 312 § 15; 1990 c 276 § 9; 1981 c 298 § 10; 1979 c 155 § 28.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—1990 c 276: See RCW 13.32A.015.

Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.150 Out-of-home placement—Child in need of services petition by child or parent. (1) Except as otherwise provided in this chapter, the juvenile court shall not accept the filing of a child in need of services petition by the child or the parents or the filing of an at-risk youth petition by the parent, unless verification is provided that the department has completed a family assessment. The family assessment shall involve the multidisciplinary team if one exists. The family assessment or plan of services developed by the multidisciplinary team shall be aimed at family reconciliation, reunification, and avoidance of the out-of-home placement of the child. If the department is unable to complete an assessment within two working days following a request for assessment the child or the parents may proceed under subsection (2) of this section or the parent may proceed under RCW 13.32A.191.

(2) A child or a child's parent may file with the juvenile court a child in need of services petition to approve an out-of-home placement for the child. The department shall, when requested, assist either a parent or child in the filing of the petition. The petition must be filed in the county where the parent resides. The petition shall allege that the child is a child in need of services and shall ask only that the placement of a child outside the home of his or her parent be approved. The filing of a petition to approve the placement is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent, and confers upon the court a special jurisdiction to approve or disapprove an out-of-home placement under this chapter.

(3) A petition may not be filed if the child is the subject of a proceeding under chapter 13.34 RCW. [2000 c 123 § 17; 1996 c 133 § 20; 1995 c 312 § 16; 1992 c 205 § 208; 1990 c 276 § 10; 1989 c 269 § 1; 1981 c 298 § 11; 1979 c 155 § 29.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Intent—1990 c 276: See RCW 13.32A.015.

Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.152 Child in need of services petition—Service on parents—Notice to department—Required notice regarding Indian children. (1) Whenever a child in need of services petition is filed by: (a) A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW 13.32A.140, the filing party shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

(3)(a) Whenever the court or the petitioning party knows or has reason to know that an Indian child is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court. [2004 c 64 § 5; 2000 c 123 § 18; 1996 c 133 § 21; 1995 c 312 § 4.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

13.32A.160 Out-of-home placement—Court action upon filing of child in need of services petition—Child placement. (1) When a proper child in need of services petition to approve an out-of-home placement is filed under RCW 13.32A.120, 13.32A.140, or 13.32A.150 the juvenile court shall: (a)(i) Schedule a fact-finding hearing to be held: (A) For a child who resides in a place other than his or her parent's home and other than an out-of-home placement, within five calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the preceding judicial day; or (B) for a child living at home or in an out-of-home placement, within ten days; and (ii) notify the parent, child, and the department of such date; (b) notify the parent of the right to be represented by counsel and, if indigent, to have counsel appointed for him or her by the court; (c) appoint legal counsel for the child; (d) inform the child and his or her parent of the legal consequences of the court approving or disapproving a child in need of services petition; (e) notify the parents of their rights under this chapter and chapters 11.88, 13.34, 70.96A, and 71.34 RCW, including the right to file an at-risk youth petition, the right to submit an application for admission of their child to a treatment facility for alcohol, chemical dependency, or mental health treatment, and the right to file a guardianship petition; and (f) notify all parties, including the department, of their right to present evidence at the fact-finding hearing.

(2) Upon filing of a child in need of services petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility licensed under chapter 74.15 RCW, or any other suitable residence other than a HOPE center to be determined by the department. The court may place a child in a crisis residential center for a temporary out-of-home placement as long as the requirements of RCW 13.32A.125 are met.

(3) If the child has been placed in a foster family home or group care facility under chapter 74.15 RCW, the child shall remain there, or in any other suitable residence as determined by the department, pending resolution of the petition by the court. Any placement may be reviewed by the court within three judicial days upon the request of the juvenile or the juvenile's parent. [2000 c 123 § 19; 1997 c 146 § 6; 1996 c 133 § 22; 1995 c 312 § 17; 1990 c 276 § 11; 1989 c 269 § 2; 1979 c 155 § 30.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—1990 c 276: See RCW 13.32A.015.

Conflict with federal requirements—Severability—1990 c 276: See notes following RCW 13.32A.020.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.170 Out-of-home placement—Fact-finding hearing. (1) The court shall hold a fact-finding hearing to consider a proper child in need of services petition, giving due weight to the intent of the legislature that families have the right to place reasonable restrictions and rules upon their children, appropriate to the individual child's developmental level. The court may appoint legal counsel and/or a guardian ad litem to represent the child and advise parents of their right to be represented by legal counsel. At the commencement of the hearing, the court shall advise the parents of their rights as set forth in RCW 13.32A.160(1). If the court approves or denies a child in need of services petition, a written statement of the reasons must be filed.

(2) The court may approve an order stating that the child shall be placed in a residence other than the home of his or her parent only if it is established by a preponderance of the evidence, including a departmental recommendation for approval or dismissal of the petition, that:

(a) The child is a child in need of services as defined in RCW 13.32A.030(5);

(b) If the petitioner is a child, he or she has made a reasonable effort to resolve the conflict;

(c) Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(d) A suitable out-of-home placement resource is available.

Family preservation services: Chapter 74.14C RCW.

Foster placement prevention: Chapter 74.14C RCW.

Implementation of chapters 13.32A and 13.34 RCW: RCW 74.13.036.

Information about rights: RCW 26.44.100 through 26.44.120.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Out-of-home care—Social study required: RCW 74.13.065.

Out-of-home placement: RCW 13.32A.140 through 13.32A.190.

Procedures for families in conflict, interstate compact to apply, when: RCW 13.32A.110.

Therapeutic family home program for youth in custody under chapter 13.34 RCW: RCW 74.13.170.

Transitional living programs for youth in the process of being emancipated: RCW 74.13.037.

13.34.010 Short title. This chapter shall be known as the "Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship". [1977 ex.s. c 291 § 29.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.020 Legislative declaration of family unit as resource to be nurtured—Rights of child. The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions

of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter. [1998 c 314 § 1; 1990 c 284 § 31; 1987 c 524 § 2; 1977 ex.s. c 291 § 30.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.025 Child dependency cases—Coordination of services—Remedial services. (1) The department of social and health services shall develop methods for coordination of services to parents and children in child dependency cases. To the maximum extent possible under current funding levels, the department must:

(a) Coordinate and integrate services to children and families, using service plans and activities that address the children's and families' multiple needs, including ensuring that siblings have regular visits with each other, as appropriate. Assessment criteria should screen for multiple needs;

(b) Develop treatment plans for the individual needs of the client in a manner that minimizes the number of contacts the client is required to make; and

(c) Access training for department staff to increase skills across disciplines to assess needs for mental health, substance abuse, developmental disabilities, and other areas.

(2) The department shall coordinate within the administrations of the department, and with contracted service providers, to ensure that parents in dependency proceedings under this chapter receive priority access to remedial services recommended by the department in its social study or ordered by the court for the purpose of correcting any parental deficiencies identified in the dependency proceeding that are capable of being corrected in the foreseeable future. Services may also be provided to caregivers other than the parents as identified in RCW 13.34.138.

(a) For purposes of this chapter, remedial services are those services defined in the federal adoption and safe families act as time-limited family reunification services. Remedial services include individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities.

(b) The department shall provide funds for remedial services if the parent is unable to pay to the extent funding is appropriated in the operating budget or otherwise available to the department for such specific services. As a condition for receiving funded remedial services, the court may inquire into the parent's ability to pay for all or part of such services or may require that the parent make appropriate applications for funding to alternative funding sources for such services.

(c) If court-ordered remedial services are unavailable for any reason, including lack of funding, lack of services, or language barriers, the department shall promptly notify the court that the parent is unable to engage in the treatment due to the inability to access such services.

(d) This section does not create an entitlement to services and does not create judicial authority to order the provision of services except for the specific purpose of making reasonable efforts to remedy parental deficiencies identified in a dependency proceeding under this chapter. [2007 c 410 § 2; 2002 c 52 § 2; 2001 c 256 § 2.]

Short title—2007 c 410: See note following RCW 13.34.138.

Intent—2002 c 52: "It is the intent of the legislature to recognize that those sibling relationships a child has are an integral aspect of the family unit, which should be nurtured. The legislature presumes that nurturing the existing sibling relationships is in the best interest of a child, in particular in those situations where a child cannot be with their parents, guardians, or legal custodians as a result of court intervention." [2002 c 52 § 1.]

Finding—2001 c 256: "The department of social and health services serves parents and children with multiple needs, which cannot be resolved in isolation. Further, the complexity of service delivery systems is a barrier for families in crisis when a child is removed or a parent is removed from the home. The department must undertake efforts to streamline the delivery of services." [2001 c 256 § 1.]

13.34.030 Definitions. For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(5) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(6) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for indi-

Each report shall also be filed with the court and a copy given to the person evaluated and the person's counsel. A copy of the treatment plan shall also be given to the department's caseworker and to the guardian ad litem. Any program for chemical dependency shall meet the program requirements contained in chapter 70.96A RCW.

(3) If the court has ordered treatment pursuant to a dependency proceeding it shall also require the treatment program to provide, in the reports required by subsection (2) of this section, status reports to the court, the department, the supervising child-placing agency if any, and the person or person's counsel regarding the person's cooperation with the treatment plan proposed and the person's progress in treatment.

(4) If a person subject to this section fails or neglects to carry out and fulfill any term or condition of the treatment plan, the program or agency administering the treatment shall report such breach to the court, the department, the guardian ad litem, the supervising child-placing agency if any, and the person or person's counsel, within twenty-four hours, together with its recommendation. These reports shall be made as a declaration by the person who is personally responsible for providing the treatment.

(5) Nothing in this chapter may be construed as allowing the court to require the department to pay for the cost of any alcohol or substance abuse evaluation or treatment program. [2000 c 122 § 23; 1993 c 412 § 5.]

13.34.176 Violation of alcohol or substance abuse treatment conditions—Hearing—Notice—Modification of order. (1) The court, upon receiving a report under RCW 13.34.174(4) or at the department's request, may schedule a show cause hearing to determine whether the person is in violation of the treatment conditions. All parties shall be given notice of the hearing. The court shall hold the hearing within ten days of the request for a hearing. At the hearing, testimony, declarations, reports, or other relevant information may be presented on the person's alleged failure to comply with the treatment plan and the person shall have the right to present similar information on his or her own behalf.

(2) If the court finds that there has been a violation of the treatment conditions it shall modify the dependency order, as necessary, to ensure the safety of the child. The modified order shall remain in effect until the party is in full compliance with the treatment requirements. [2000 c 122 § 24; 1993 c 412 § 6.]

13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations. (1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

(a) That the child has been found to be a dependent child;

(b) That the court has entered a dispositional order pursuant to RCW 13.34.130;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;

(d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(3) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;

(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure) .

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number) ."

[2001 c 332 § 4; 2000 c 122 § 25; 1998 c 314 § 4; 1997 c 280 § 2. Prior: 1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

Severability—1990 c 246: See note following RCW 13.34.060.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.190 Order terminating parent and child relationship—Findings. After hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an order terminating all parental rights to a child only if the court finds that:

(1)(a) The allegations contained in the petition as provided in RCW 13.34.180(1) are established by clear, cogent, and convincing evidence; or

(b) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1) (c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

(c) The allegation under RCW 13.34.180(2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.132 exist; or

(d) The allegation under RCW 13.34.180(3) is established beyond a reasonable doubt; and

(2) Such an order is in the best interests of the child. [2000 c 122 § 26; 1998 c 314 § 5; 1993 c 412 § 3; 1992 c 145 § 15; 1990 c 284 § 33; 1979 c 155 § 48; 1977 ex.s. c 291 § 47.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.200 Order terminating parent and child relationship—Rights of parties when granted. (1) Upon the termination of parental rights pursuant to RCW 13.34.180, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceedings concerning the child, except as provided in RCW 13.34.215: PROVIDED, That any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent and the order shall so state.

(2) An order terminating the parent and child relationship shall not disentitle a child to any benefit due the child from any third person, agency, state, or the United States, nor shall any action under this chapter be deemed to affect any rights and benefits that an Indian child derives from the child's descent from a member of a federally recognized Indian tribe.

(3) An order terminating the parent-child relationship shall include a statement addressing the status of the child's sibling relationships and the nature and extent of sibling placement, contact, or visits. [2007 c 413 § 2; 2003 c 227 § 7; 2000 c 122 § 27; 1977 ex.s. c 291 § 48.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights. If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption. If an adoptive home has not been identified, the department or agency shall place the child in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

Day care—Information to parents and providers: RCW 74.15.200.

Domestic violence prevention: Chapter 26.50 RCW.

Missing children clearinghouse and hot line: Chapter 13.60 RCW.

Persons over sixty, abuse: Chapter 74.34 RCW.

Primary prevention program for child abuse and neglect: RCW 28A.300.160.

Record checks: RCW 43.43.830 through 43.43.840 and 43.20A.710.

School districts to develop policies and participate in programs: RCW 28A.230.080.

Shaken baby syndrome: RCW 43.121.140.

Witness of offense against child, duty: RCW 9.69.100.

26.44.010 Declaration of purpose. The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children: PROVIDED, That such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions: PROVIDED FURTHER, That this chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety. [1999 c 176 § 27; 1987 c 206 § 1; 1984 c 97 § 1; 1977 ex.s. c 80 § 24; 1975 1st ex.s. c 217 § 1; 1969 ex.s. c 35 § 1; 1965 c 13 § 1.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Severability—1984 c 97: See RCW 74.34.900.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.015 Limitations of chapter. (1) This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not injurious to the child's health, welfare, or safety.

(2) Nothing in this chapter may be used to prohibit the reasonable use of corporal punishment as a means of discipline.

(3) No parent or guardian may be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap. [2005 c 512 § 4; 1999 c 176 § 28; 1997 c 386 § 23; 1993 c 412 § 11.]

Finding—Intent—Effective date—Short title—2005 c 512: See notes following RCW 26.44.100.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

26.44.020 Definitions. ***(Effective until October 1, 2008.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused

(4) An unfounded, screened-out, or inconclusive report may not be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW.

(5)(a) If the department fails to comply with this section, an individual who is the subject of a report may institute proceedings for injunctive or other appropriate relief for enforcement of the requirement to purge information. These proceedings may be instituted in the superior court for the county in which the person resides or, if the person is not then a resident of this state, in the superior court for Thurston county.

(b) If the department fails to comply with subsection (4) of this section and an individual who is the subject of the report is harmed by the disclosure of information, in addition to the relief provided in (a) of this subsection, the court may award a penalty of up to one thousand dollars and reasonable attorneys' fees and court costs to the petitioner.

(c) A proceeding under this subsection does not preclude other methods of enforcement provided for by law.

(6) Nothing in this section shall prevent the department from retaining general, nonidentifying information which is required for state and federal reporting and management purposes. [2007 c 220 § 3; 1997 c 282 § 1.]

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

26.44.032 Legal defense of public employee. In cases in which a public employee subject to RCW 26.44.030 acts in good faith and without gross negligence in his or her reporting duty, and if the employee's judgment as to what constitutes reasonable cause to believe that a child has suffered abuse or neglect is being challenged, the public employer shall provide for the legal defense of the employee. [1999 c 176 § 31; 1988 c 87 § 1.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

26.44.035 Response to complaint by more than one agency—Procedure—Written records. (1) If the department or a law enforcement agency responds to a complaint of alleged child abuse or neglect and discovers that another agency has also responded to the complaint, the agency shall notify the other agency of their presence, and the agencies shall coordinate the investigation and keep each other apprised of progress.

(2) The department, each law enforcement agency, each county prosecuting attorney, each city attorney, and each court shall make as soon as practicable a written record and shall maintain records of all incidents of suspected child abuse reported to that person or agency.

(3) Every employee of the department who conducts an interview of any person involved in an allegation of abuse or neglect shall retain his or her original written records or notes setting forth the content of the interview unless the notes were entered into the electronic system operated by the department which is designed for storage, retrieval, and preservation of such records.

(4) Written records involving child sexual abuse shall, at a minimum, be a near verbatim record for the disclosure interview. The near verbatim record shall be produced within fifteen calendar days of the disclosure interview, unless waived by management on a case-by-case basis.

(5) Records kept under this section shall be identifiable by means of an agency code for child abuse. [1999 c 389 § 7; 1997 c 386 § 26; 1985 c 259 § 3.]

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Legislative findings—1985 c 259: See note following RCW 26.44.030.

26.44.040 Reports—Oral, written—Contents. An immediate oral report must be made by telephone or otherwise to the proper law enforcement agency or the department of social and health services and, upon request, must be followed by a report in writing. Such reports must contain the following information, if known:

(1) The name, address, and age of the child;

(2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child;

(3) The nature and extent of the alleged injury or injuries;

(4) The nature and extent of the alleged neglect;

(5) The nature and extent of the alleged sexual abuse;

(6) Any evidence of previous injuries, including their nature and extent; and

(7) Any other information that may be helpful in establishing the cause of the child's death, injury, or injuries and the identity of the alleged perpetrator or perpetrators. [1999 c 176 § 32; 1997 c 386 § 27; 1993 c 412 § 14; 1987 c 206 § 4; 1984 c 97 § 4; 1977 ex.s. c 80 § 27; 1975 1st ex.s. c 217 § 4; 1971 ex.s. c 167 § 2; 1969 ex.s. c 35 § 4; 1965 c 13 § 4.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Severability—1984 c 97: See RCW 74.34.900.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.050 Abuse or neglect of child—Duty of law enforcement agency or department of social and health services—Taking child into custody without court order, when. Upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child. [1999 c 176 § 33. Prior: 1987 c 450 § 7; 1987 c 206 § 5; 1984 c 97 § 5; 1981 c 164 § 3; 1977 ex.s. c 291 § 51; 1977 ex.s. c 80 § 28; 1975 1st ex.s. c 217 § 5; 1971 ex.s. c 302 § 15; 1969 ex.s. c 35 § 5; 1965 c 13 § 5.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Severability—1984 c 97: See RCW 74.34.900.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

26.44.053 Guardian ad litem, appointment—Examination of person having legal custody—Hearing—Procedure. (1) In any judicial proceeding under this chapter or chapter 13.34 RCW in which it is alleged that a child has been subjected to child abuse or neglect, the court shall appoint a guardian ad litem for the child as provided in chapter 13.34 RCW. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by counsel in the proceedings.

(2) At any time prior to or during a hearing in such a case, the court may, on its own motion, or the motion of the guardian ad litem, or other parties, order the examination by a physician, psychologist, or psychiatrist, of any parent or child or other person having custody of the child at the time of the alleged child abuse or neglect, if the court finds such an examination is necessary to the proper determination of the case. The hearing may be continued pending the completion of such examination. The physician, psychologist, or psychiatrist conducting such an examination may be required to testify concerning the results of such examination and may be asked to give his or her opinion as to whether the protection of the child requires that he or she not be returned to the custody of his or her parents or other persons having custody of him or her at the time of the alleged child abuse or neglect. Persons so testifying shall be subject to cross-examination as are other witnesses. No information given at any such examination of the parent or any other person having custody of the child may be used against such person in any subsequent criminal proceedings against such person or custodian concerning the alleged abuse or neglect of the child.

(3) A parent or other person having legal custody of a child alleged to be abused or neglected shall be a party to any proceeding that may impair or impede such person's interest in and custody or control of the child. [1997 c 386 § 28; 1996 c 249 § 16; 1994 c 110 § 1; 1993 c 241 § 4. Prior: 1987 c 524 § 11; 1987 c 206 § 7; 1975 1st ex.s. c 217 § 8.]

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Intent—1996 c 249: See note following RCW 2.56.030.

Conflict with federal requirements—1993 c 241: See note following RCW 13.34.030.

26.44.056 Protective detention or custody of abused child—Reasonable cause—Notice—Time limits—Monitoring plan—Liability. (1) An administrator of a hospital or similar institution or any physician, licensed pursuant to chapters 18.71 or 18.57 RCW, may detain a child without consent of a person legally responsible for the child whether or not medical treatment is required, if the circumstances or conditions of the child are such that the detaining individual has reasonable cause to believe that permitting the child to continue in his or her place of residence or in the care and custody of the parent, guardian, custodian or other person legally responsible for the child's care would present an imminent danger to that child's safety: PROVIDED, That such administrator or physician shall notify or cause to be notified the appropriate law enforcement agency or child protective services pursuant to RCW 26.44.040. Such notification shall be made as soon as possible and in no case longer than seventy-two hours. Such temporary protective custody by an administrator or doctor shall not be deemed an arrest. Child protective services may detain the child until the court assumes custody, but in no case longer than seventy-two hours, excluding Saturdays, Sundays, and holidays.

(2) Whenever an administrator or physician has reasonable cause to believe that a child would be in imminent danger if released to a parent, guardian, custodian, or other person or is in imminent danger if left in the custody of a parent, guardian, custodian, or other person, the administrator or physician may notify a law enforcement agency and the law enforcement agency shall take the child into custody or cause the child to be taken into custody. The law enforcement agency shall release the child to the custody of child protective services. Child protective services shall detain the child until the court assumes custody or upon a documented and substantiated record that in the professional judgment of the child protective services the child's safety will not be endangered if the child is returned. If the child is returned, the department shall establish a six-month plan to monitor and assure the continued safety of the child's life or health. The monitoring period may be extended for good cause.

(3) A child protective services employee, an administrator, doctor, or law enforcement officer shall not be held liable in any civil action for the decision for taking the child into custody, if done in good faith under this section. [1983 c 246 § 3; 1982 c 129 § 8; 1975 1st ex.s. c 217 § 9.]

Severability—1982 c 129: See note following RCW 9A.04.080.

26.44.060 Immunity from civil or criminal liability—Confidential communications not violated—Actions against state not affected—False report, penalty. (1)(a) Except as provided in (b) of this subsection, any person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged child abuse or neglect in a judicial proceeding shall in so doing be immune from any liability arising out of such reporting or testifying under any law of this state or its political subdivisions.

(b) A person convicted of a violation of subsection (4) of this section shall not be immune from liability under (a) of this subsection.

(2) An administrator of a hospital or similar institution or any physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a child into custody pursuant to RCW 26.44.056 shall not be subject to criminal or civil liability for such taking into custody.

(3) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.

74.13.031 Duties of department—Child welfare services—Children's services advisory committee. ***(Effective December 31, 2008.)*** The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. The policy for monitoring placements under this section shall require that children in out-of-home care and in-home dependencies and their caregivers receive a private and individual face-to-face visit each month.

(a) The department shall conduct the monthly visits with children and caregivers required under this section unless the child's placement is being supervised under a contract between the department and a private agency accredited by a national child welfare accrediting entity, in which case the private agency shall, within existing resources, conduct the monthly visits with the child and with the child's caregiver according to the standards described in this subsection and shall provide the department with a written report of the visits within fifteen days of completing the visits.

(b) In cases where the monthly visits required under this subsection are being conducted by a private agency, the department shall conduct a face-to-face health and safety visit with the child at least once every ninety days.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) Have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.

(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.

(iii) A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally

licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(15) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels. [2008 c 267 § 6; 2007 c 413 § 10. Prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Effective date—2008 c 267 § 6: "Section 6 of this act takes effect December 31, 2008." [2008 c 267 § 14.]

Severability—2007 c 413: See note following RCW 13.34.215.

Construction—2006 c 266: "Nothing in this act shall be construed to create:

(1) An entitlement to services;

(2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or

(3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department." [2006 c 266 § 2.]

Adoption of rules—2006 c 266: "The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act." [2006 c 266 § 3.]

Study and report—2006 c 266: "(1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW 74.13.031(10). The study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section." [2006 c 266 § 4.]

Finding—2006 c 221: See note following RCW 13.34.315.

Effective date—2004 c 183: See note following RCW 13.34.160.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Effective date—1997 c 272: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 272 § 8.]

Effective date—1987 c 170 §§ 10 and 11: "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

Severability—1987 c 170: See note following RCW 13.04.030.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1967 c 172: See note following RCW 74.15.010.

Declaration of purpose—1967 c 172: See RCW 74.15.010.

Abuse of child: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.

74.13.0311 Provided under deferred prosecution order. The department or its contractors may provide child welfare services pursuant to a deferred prosecution plan ordered under chapter 10.05 RCW. Child welfare services provided under this chapter pursuant to a deferred prosecution order may not be construed to prohibit the department from providing services or undertaking proceedings pursuant to chapter 13.34 or 26.44 RCW. [2002 c 219 § 13.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

74.13.032 Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities. (1) The department shall establish, by contracts with private or public vendors, regional crisis residential centers with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children.

(2) Within available funds appropriated for this purpose, the department shall establish, by contracts with private or public vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(3) The department shall, in addition to the facilities established under subsections (1) and (2) of this section, establish additional crisis residential centers pursuant to contract with licensed private group care facilities.

(4) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

under an adoption assistance agreement entered into by this state are eligible to receive assistance in accordance with the applicable laws and procedures. [1997 c 31 § 7.]

74.13.159 Interstate agreements for adoption of children with special needs—Adoption assistance and medical assistance in state plan. Consistent with federal law, the department, in connection with the administration of RCW 74.13.152 through 74.13.158 and any pursuant compact shall include in any state plan made pursuant to the adoption assistance and child welfare act of 1980 (P.L. 96-272), Titles IV(e) and XIX of the social security act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law. [1997 c 31 § 8.]

74.13.165 Home studies for adoption—Purchase of services from nonprofit agencies. The secretary or the secretary's designee may purchase services from nonprofit agencies for the purpose of conducting home studies for legally free children who have been awaiting adoption finalization for more than ninety days. The home studies selected to be done under this section shall be for the children who have been legally free and awaiting adoption finalization the longest period of time. [1997 c 272 § 4.]

Reviser's note: 1997 c 272 directed that this section be added to chapter 43.20A RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 74.13 RCW.

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.170 Therapeutic family home program for youth in custody under chapter 13.34 RCW. The department of social and health services may implement a therapeutic family home program for up to fifteen youth in the custody of the department under chapter 13.34 RCW. The program shall strive to develop and maintain a mutually reinforcing relationship between the youth and the therapeutic staff associated with the program. [1991 c 326 § 2.]

Part headings not law—Severability—1991 c 326: See RCW 71.36.900 and 71.36.901.

74.13.200 Demonstration project for protection, care, and treatment of children at-risk of abuse or neglect. The department of social and health services shall conduct a two-year demonstration project for the purpose of contracting with an existing day care center to provide for the protection, care, and treatment of children who are at risk of being abused or neglected. The children who shall be served by this project shall range in age from birth to twenty-four months. The client population served shall not exceed thirty children at any one time. [1979 ex.s. c 248 § 1.]

74.13.210 Project day care center—Definition. For the purposes of RCW 74.13.200 through 74.13.230 "day care center" means an agency, other than a residence, which regularly provides care for children for any part of the twenty-four hour day. No day care center shall be located in a private family residence unless that portion of the residence to which the children have access is used exclusively for the children during the hours the center is in operation or is separate from the usual living quarters of the family. [1979 ex.s. c 248 § 2.]

74.13.220 Project services. The services provided through this project shall include:

(1) Transportation to and from the child's home;

(2) Daily monitoring of the child's physical and emotional condition;

(3) Developmentally oriented programs designed to meet the unique needs of each child in order to overcome the effects of parental abuse or neglect;

(4) Family counseling and treatment; and

(5) Evaluation by the department of social and health services assessing the efficiency and effectiveness of day care centers operated under the project. [1979 ex.s. c 248 § 3.]

74.13.230 Project shall utilize community services. The department of social and health services shall utilize existing community services and promote cooperation between the services in implementing the intent of RCW 74.13.200 through 74.13.230. [1979 ex.s. c 248 § 4.]

FOSTER CARE

74.13.250 Preservice training. (1) Preservice training is recognized as a valuable tool to reduce placement disruptions, the length of time children are in care, and foster parent turnover rates. Preservice training also assists potential foster parents in making their final decisions about foster parenting and assists social service agencies in obtaining information about whether to approve potential foster parents.

(2) Foster parent preservice training shall include information about the potential impact of placement on foster children; social service agency administrative processes; the requirements, responsibilities, expectations, and skills needed to be a foster parent; attachment, separation, and loss issues faced by birth parents, foster children, and foster parents; child management and discipline; birth family relationships; and helping children leave foster care. Preservice training shall assist applicants in making informed decisions about whether they want to be foster parents. Preservice training shall be designed to enable the agency to assess the ability, readiness, and appropriateness of families to be foster parents. As a decision tool, effective preservice training provides potential foster parents with enough information to make an appropriate decision, affords potential foster parents an opportunity to discuss their decision with others and consider its implications for their family, clarifies foster family expectations, presents a realistic picture of what foster parenting involves, and allows potential foster parents to consider and explore the different types of children they might serve.

(3) Preservice training shall be completed prior to the issuance of a foster care license, except that the department may, on a case by case basis, issue a written waiver that allows the foster parent to complete the training after licensure, so long as the training is completed within ninety days following licensure. [1990 c 284 § 2.]

Finding—1990 c 284: "The legislature finds that the foster care system plays an important role in preserving families and giving consistent and nur-

turing care to children placed in its care. The legislature further finds that foster parents play an integral and important role in the system and particularly in the child's chances for the earliest possible reunification with his or her family." [1990 c 284 § 1.]

Effective date—1990 c 284: "This act shall take effect July 1, 1990, however the secretary may immediately take any steps necessary to ensure implementation of section 17 of this act on July 1, 1990." [1990 c 284 § 27.]

74.13.260 On-site monitoring program. Regular on-site monitoring of foster homes to assure quality care improves care provided to children in family foster care. An on-site monitoring program shall be established by the department to assure quality care and regularly identify problem areas. Monitoring shall be done by the department on a random sample basis of no less than ten percent of the total licensed family foster homes licensed by the department on July 1 of each year. [1998 c 245 § 148; 1990 c 284 § 4.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.270 Respite care. The legislature recognizes the need for temporary short-term relief for foster parents who care for children with emotional, mental, or physical handicaps. For purposes of this section, respite care means appropriate, temporary, short-term care for these foster children placed with licensed foster parents. The purpose of this care is to give the foster parents temporary relief from the stresses associated with the care of these foster children. The department shall design a program of respite care that will minimize disruptions to the child and will serve foster parents within these priorities, based on input from foster parents, foster parent associations, and reliable research if available. [1990 c 284 § 8.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.280 Client information. (1) Except as provided in RCW 70.24.105, whenever a child is placed in out-of-home care by the department or a child-placing agency, the department or agency shall share information known to the department or agency about the child and the child's family with the care provider and shall consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Information about the child and the child's family shall include information known to the department or agency as to whether the child is a sexually reactive child, has exhibited high-risk behaviors, or is physically assaultive or physically aggressive, as defined in this section.

(3) Information about the child shall also include information known to the department or agency that the child:

(a) Has received a medical diagnosis of fetal alcohol syndrome or fetal alcohol effect;

(b) Has been diagnosed by a qualified mental health professional as having a mental health disorder;

(c) Has witnessed a death or substantial physical violence in the past or recent past; or

(d) Was a victim of sexual or severe physical abuse in the recent past.

(4) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law. Care providers shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law.

(5) Nothing in this section shall be construed to limit the authority of the department or child-placing agencies to disclose client information or to maintain client confidentiality as provided by law.

(6) As used in this section:

(a) "Sexually reactive child" means a child who exhibits sexual behavior problems including, but not limited to, sexual behaviors that are developmentally inappropriate for their age or are harmful to the child or others.

(b) "High-risk behavior" means an observed or reported and documented history of one or more of the following:

(i) Suicide attempts or suicidal behavior or ideation;

(ii) Self-mutilation or similar self-destructive behavior;

(iii) Fire-setting or a developmentally inappropriate fascination with fire;

(iv) Animal torture;

(v) Property destruction; or

(vi) Substance or alcohol abuse.

(c) "Physically assaultive or physically aggressive" means a child who exhibits one or more of the following behaviors that are developmentally inappropriate and harmful to the child or to others:

(i) Observed assaultive behavior;

(ii) Reported and documented history of the child willfully assaulting or inflicting bodily harm; or

(iii) Attempting to assault or inflict bodily harm on other children or adults under circumstances where the child has the apparent ability or capability to carry out the attempted assaults including threats to use a weapon. [2007 c 409 § 6; 2007 c 220 § 4; 2001 c 318 § 3; 1997 c 272 § 7; 1995 c 311 § 21; 1991 c 340 § 4; 1990 c 284 § 10.]

Reviser's note: This section was amended by 2007 c 220 § 4 and by 2007 c 409 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 409: See note following RCW 13.34.096.

Effective date—1997 c 272: See note following RCW 74.13.031.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.283 Washington state identicards—Foster youth. (1) For the purpose of assisting foster youth in obtaining a Washington state identicard, submission of the information and materials listed in this subsection from the department to the department of licensing is sufficient proof of identity and residency and shall serve as the necessary authorization for the youth to apply for and obtain a Washington state identicard:

(a) A written signed statement prepared on department letterhead, verifying the following:

(i) The youth is a minor who resides in Washington;

(ii) Pursuant to a court order, the youth is dependent and the department or other supervising agency is the legal custo-

(vii) Utilize outcome standards for measuring the effectiveness of social and health services for children and families.

(b) In developing services under this subsection, local communities must be involved in planning and developing community networks that are tailored to their unique needs. [2000 c 219 § 1; 1994 sp.s. c 7 § 102; 1983 c 192 § 2.]

Severability—2000 c 219: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 219 § 3.]

Effective date—2000 c 219: "This act takes effect July 1, 2000." [2000 c 219 § 4.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1983 c 192: "Sections 2 through 4 of this act shall take effect January 1, 1984." [1983 c 192 § 8.]

74.14A.025 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict—Policy updated. To update, specify, and expand the policy stated in RCW 74.14A.020, the following is declared:

It is the policy of the state of Washington to promote:

(1) Family-oriented services and supports that:

(a) Respond to the changing nature of families; and

(b) Respond to what individuals and families say they need, and meet those needs in a way that maintains their dignity and respects their choices;

(2) Culturally relevant services and supports that:

(a) Explicitly recognize the culture and beliefs of each family and use these as resources on behalf of the family;

(b) Provide equal access to culturally unique communities in planning and programs, and day-to-day work, and actively address instances where clearly disproportionate needs exist; and

(c) Enhance every culture's ability to achieve self-sufficiency and contribute in a productive way to the larger community;

(3) Coordinated services that:

(a) Develop strategies and skills for collaborative planning, problem solving, and service delivery;

(b) Encourage coordination and innovation by providing both formal and informal ways for people to communicate and collaborate in planning and programs;

(c) Allow clients, vendors, community people, and other agencies to creatively provide the most effective, responsive, and flexible services; and

(d) Commit to an open exchange of skills and information; and expect people throughout the system to treat each other with respect, dignity, and understanding;

(4) Locally planned services and supports that:

(a) Operate on the belief that each community has special characteristics, needs, and strengths;

(b) Include a cross-section of local community partners from the public and private sectors, in the planning and delivery of services and supports; and

(c) Support these partners in addressing the needs of their communities through both short-range and long-range planning and in establishing priorities within state and federal standards;

(5) Community-based prevention that encourages and supports state residents to create positive conditions in their communities to promote the well-being of families and reduce crises and the need for future services;

(6) Outcome-based services and supports that:

(a) Include a fair and realistic system for measuring both short-range and long-range progress and determining whether efforts make a difference;

(b) Use outcomes and indicators that reflect the goals that communities establish for themselves and their children;

(c) Work towards these goals and outcomes at all staff levels and in every agency; and

(d) Provide a mechanism for informing the development of program policies;

(7) Customer service that:

(a) Provides a climate that empowers staff to deliver quality programs and services;

(b) Is provided by courteous, sensitive, and competent professionals; and

(c) Upholds the dignity and respect of individuals and families by providing appropriate staff recognition, information, training, skills, and support;

(8) Creativity that:

(a) Increases the flexibility of funding and programs to promote innovation in planning, development, and provision of quality services; and

(b) Simplifies and reduces or eliminates rules that are barriers to coordination and quality services. [1992 c 198 § 2.]

Severability—Effective date—1992 c 198: See RCW 70.190.910 and 70.190.920.

Family policy council: Chapter 70.190 RCW.

74.14A.030 Treatment of juvenile offenders—Nonresidential community-based programs. The department shall address the needs of juvenile offenders whose standard range sentences do not include commitment by developing nonresidential community-based programs designed to reduce the incidence of manifest injustice commitments when consistent with public safety. [1983 c 192 § 3.]

Effective date—1983 c 192: See note following RCW 74.14A.020.

74.14A.040 Treatment of juvenile offenders—Involvement of family unit. The department shall involve a juvenile offender's family as a unit in the treatment process. The department need not involve the family as a unit in cases when family ties have by necessity been irrevocably broken. When the natural parents have been or will be replaced by a foster family or guardian, the new family will be involved in the treatment process. [1983 c 192 § 4.]

Effective date—1983 c 192: See note following RCW 74.14A.020.

74.14A.050 Identification of children in a state-assisted support system—Program development for long-term care—Foster care caseload—Emancipation of minors study. The secretary shall:

(1)(a) Consult with relevant qualified professionals to develop a set of minimum guidelines to be used for identifying all children who are in a state-assisted support system, whether at-home or out-of-home, who are likely to need

long-term care or assistance, because they face physical, emotional, medical, mental, or other long-term challenges;

(b) The guidelines must, at a minimum, consider the following criteria for identifying children in need of long-term care or assistance:

(i) Placement within the foster care system for two years or more;

(ii) Multiple foster care placements;

(iii) Repeated unsuccessful efforts to be placed with a permanent adoptive family;

(iv) Chronic behavioral or educational problems;

(v) Repetitive criminal acts or offenses;

(vi) Failure to comply with court-ordered disciplinary actions and other imposed guidelines of behavior, including drug and alcohol rehabilitation; and

(vii) Chronic physical, emotional, medical, mental, or other similar conditions necessitating long-term care or assistance;

(2) Develop programs that are necessary for the long-term care of children and youth that are identified for the purposes of this section. Programs must: (a) Effectively address the educational, physical, emotional, mental, and medical needs of children and youth; and (b) incorporate an array of family support options, to individual needs and choices of the child and family. The programs must be ready for implementation by January 1, 1995;

(3) Conduct an evaluation of all children currently within the foster care agency caseload to identify those children who meet the criteria set forth in this section. All children entering the foster care system must be evaluated for identification of long-term needs within thirty days of placement;

(4) As a result of the passage of chapter 232, Laws of 2000, the department is conducting a pilot project to do a comparative analysis of a variety of assessment instruments to determine the most effective tools and methods for evaluation of children. The pilot project may extend through August 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives by September 30, 2001, on the results of the pilot project. The department shall select an assessment instrument that can be implemented within available resources. The department shall complete statewide implementation by December 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives on how the use of the selected assessment instrument has affected department policies, by no later than December 31, 2002, December 31, 2004, and December 31, 2006;

(5) Use the assessment tool developed pursuant to subsection (4) of this section in making out-of-home placement decisions for children;

(6) Each region of the department shall make the appropriate number of referrals to the foster care assessment program to ensure that the services offered by the program are used to the extent funded pursuant to the department's contract with the program. The department shall report to the legislature by November 30, 2000, on the number of referrals, by region, to the foster care assessment program. If the regions are not referring an adequate number of cases to the program, the department shall include in its report an explanation of what action it is or has taken to ensure that the referrals are adequate;

(7) The department shall report to the legislature by December 15, 2000, on how it will use the foster care assessment program model to assess children as they enter out-of-home care;

(8) The department is to accomplish the tasks listed in subsections (4) through (7) of this section within existing resources;

(9) Study and develop a comprehensive plan for the evaluation and identification of all children and youth in need of long-term care or assistance, including, but not limited to, the mentally ill, developmentally disabled, medically fragile, seriously emotionally or behaviorally disabled, and physically impaired;

(10) Study and develop a plan for the children and youth in need of long-term care or assistance to ensure the coordination of services between the department's divisions and between other state agencies who are involved with the child or youth;

(11) Study and develop guidelines for transitional services, between long-term care programs, based on the person's age or mental, physical, emotional, or medical condition; and

(12) Study and develop a statutory proposal for the emancipation of minors. [2003 c 207 § 9; 2001 c 255 § 1; 2000 c 232 § 1; 1998 c 245 § 149; 1993 c 508 § 7; 1993 c 505 § 5.]

Section captions—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

Emancipation of minors: Chapter 13.64 RCW.

74.14A.060 Blended funding projects—Department to make annual reports. The secretary of the department of social and health services shall charge appropriated funds to support blended funding projects for youth subject to any current or future waiver the department receives to the requirements of IV-E funding. To be eligible for blended funding a child must be eligible for services designed to address a behavioral, mental, emotional, or substance abuse issue from the department of social and health services and require services from more than one categorical service delivery system. Before any blended funding project is established by the secretary, any entity or person proposing the project shall seek input from the public health and safety network or networks established in the catchment area of the project. The network or networks shall submit recommendations on the blended funding project to the family policy council. The family policy council shall advise the secretary whether to approve the proposed blended funding project. The network shall review the proposed blended funding project pursuant to its authority to examine the decategorization of program funds under RCW 70.190.110, within the current appropriation level. The department shall document the number of children who participate in blended funding projects, the total blended funding amounts per child, the amount charged to each appropriation by program, and services provided to each child through each blended funding project and report this information to the appropriate committees of the legislature by December 1st of each year, beginning in December 1, 2000. [2000 c 219 § 2.]

Severability—Effective date—2000 c 219: See notes following RCW 74.14A.020.

(4) As part of the request for proposal or request for qualifications process the department of community, trade, and economic development shall ensure that there be no duplication of services with existing programs including the crime victims' compensation program as provided in chapter 7.68 RCW. The department shall also ensure that victims exhaust private insurance benefits available to the child victim before providing services to the child victim under this section. [1996 c 123 § 8; 1990 c 3 § 1402.]

Transfer of powers and duties—1996 c 123: "The powers and duties of the department of social and health services to provide services and funding for services to sexually abused children under RCW 74.14B.060 shall be transferred to the department of community, trade, and economic development on July 1, 1996. The department of social and health services shall transfer all unspent appropriated funds, records, and documents necessary to facilitate a successful transfer." [1996 c 123 § 10.]

Effective date—1996 c 123: See note following RCW 43.280.010.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

74.14B.070 Child victims of sexual assault or sexual abuse—Early identification, treatment. The department of social and health services through its division of children and family services shall, subject to available funds, establish a system of early identification and referral to treatment of child victims of sexual assault or sexual abuse. The system shall include schools, physicians, sexual assault centers, domestic violence centers, child protective services, and foster parents. A mechanism shall be developed to identify communities that have experienced success in this area and share their expertise and methodology with other communities statewide. [1990 c 3 § 1403.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

74.14B.080 Liability insurance for foster parents. (1) Subject to subsection (2) of this section, the secretary of social and health services shall provide liability insurance to foster parents licensed under chapter 74.15 RCW. The coverage shall be for personal injury and property damage caused by foster parents or foster children that occurred while the children were in foster care. Such insurance shall cover acts of ordinary negligence but shall not cover illegal conduct or bad faith acts taken by foster parents in providing foster care. Moneys paid from liability insurance for any claim are limited to the amount by which the claim exceeds the amount available to the claimant from any valid and collectible liability insurance.

(2) The secretary of social and health services may purchase the insurance required in subsection (1) of this section or may choose a self-insurance method. The total moneys expended pursuant to this authorization shall not exceed five hundred thousand dollars per biennium. If the secretary elects a method of self-insurance, the expenditure shall include all administrative and staff costs. If the secretary elects a method of self-insurance, he or she may, by rule, place a limit on the maximum amount to be paid on each claim.

(3) Nothing in this section or RCW 4.24.590 is intended to modify the foster parent reimbursement plan in place on July 1, 1991.

(4) The liability insurance program shall be available by July 1, 1991. [1991 c 283 § 2.]

Findings—1991 c 283: "The legislature recognizes the unique legal risks that foster parents face in taking children into their care. Third parties have filed claims against foster parents for losses and damage caused by foster children. Additionally, foster children and their parents have sued foster parents for actions occurring while the children were in foster care. The legislature finds that some potential foster parents are unwilling to subject themselves to potential liability without insurance protection. The legislature further finds that to encourage those people to serve as foster parents, it is necessary to assure that such insurance is available to them." [1991 c 283 § 1.]

Effective date—1991 c 283: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 283 § 5.]

74.14B.900 Captions. Section headings as used in this chapter do not constitute any part of the law. [1987 c 503 § 19.]

74.14B.901 Severability—1987 c 503. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 503 § 21.]

74.14B.902 Effective date—1987 c 503. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 503 § 22.]

Chapter 74.14C RCW
FAMILY PRESERVATION SERVICES

Sections

74.14C.005 Findings and intent. (1) The legislature believes that protecting the health and safety of children is paramount. The legislature recognizes that the number of children entering out-of-home care is increasing and that a number of children receive long-term foster care protection. Reasonable efforts by the department to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare system. It is intended that providing up-front services decrease the number of children entering out-of-home care and have the effect of eventually lowering foster care expenditures and strengthening the family unit.

Within available funds, the legislature directs the department to focus child welfare services on protecting the child, strengthening families and, to the extent possible, providing necessary services in the family setting, while drawing upon

the strengths of the family. The legislature intends services be locally based and offered as early as possible to avoid disruption to the family, out-of-home placement of the child, and entry into the dependency system. The legislature also intends that these services be used for those families whose children are returning to the home from out-of-home care. These services are known as family preservation services and intensive family preservation services and are characterized by the following values, beliefs, and goals:

(a) Safety of the child is always the first concern;

(b) Children need their families and should be raised by their own families whenever possible;

(c) Interventions should focus on family strengths and be responsive to the individual family's cultural values and needs;

(d) Participation should be voluntary; and

(e) Improvement of family functioning is essential in order to promote the child's health, safety, and welfare and thereby allow the family to remain intact and allow children to remain at home.

(2) Subject to the availability of funds for such purposes, the legislature intends for these services to be made available to all eligible families on a statewide basis through a phased-in process. Except as otherwise specified by statute, the department of social and health services shall have the authority and discretion to implement and expand these services as provided in this chapter. The department shall consult with the community public health and safety networks when assessing a community's resources and need for services.

(3) It is the legislature's intent that, within available funds, the department develop services in accordance with this chapter.

(4) Nothing in this chapter shall be construed to create an entitlement to services nor to create judicial authority to order the provision of preservation services to any person or family if the services are unavailable or unsuitable or that the child or family are not eligible for such services. [1995 c 311 § 1; 1992 c 214 § 1.]

74.14C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services.

(2) "Community support systems" means the support that may be organized through extended family members, friends, neighbors, religious organizations, community programs, cultural and ethnic organizations, or other support groups or organizations.

(3) "Family preservation services" means in-home or community-based services drawing on the strengths of the family and its individual members while addressing family needs to strengthen and keep the family together where possible and may include:

(a) Respite care of children to provide temporary relief for parents and other caregivers;

(b) Services designed to improve parenting skills with respect to such matters as child development, family budgeting, coping with stress, health, safety, and nutrition; and

(c) Services designed to promote the well-being of children and families, increase the strength and stability of families, increase parents' confidence and competence in their parenting abilities, promote a safe, stable, and supportive family environment for children, and otherwise enhance children's development.

Family preservation services shall have the characteristics delineated in RCW 74.14C.020 (2) and (3).

(4) "Imminent" means a decision has been made by the department that, without intensive family preservation services, a petition requesting the removal of a child from the family home will be immediately filed under chapter 13.32A or 13.34 RCW, or that a voluntary placement agreement will be immediately initiated.

(5) "Intensive family preservation services" means community-based services that are delivered primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent out-of-home placement, and that have all of the characteristics delineated in RCW 74.14C.020 (1) and (3).

(6) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(7) "Paraprofessional worker" means any individual who is trained and qualified to provide assistance and community support systems development to families and who acts under the supervision of a preservation services therapist. The paraprofessional worker is not intended to replace the role and responsibilities of the preservation services therapist.

(8) "Preservation services" means family preservation services and intensive family preservation services that consider the individual family's cultural values and needs. [1996 c 240 § 2; 1995 c 311 § 2; 1992 c 214 § 2.]

74.14C.020 Preservation services. (1) Intensive family preservation services shall have all of the following characteristics:

(a) Services are provided by specially trained service providers who have received at least forty hours of training from recognized intensive in-home services experts. Service providers deliver the services in the family's home, and other environments of the family, such as their neighborhood or schools;

(b) Caseload size averages two families per service provider unless paraprofessional services are utilized, in which case a provider may, but is not required to, handle an average caseload of five families;

(c) The services to the family are provided by a single service provider who may be assisted by paraprofessional workers, with backup providers identified to provide assistance as necessary;

(d) Services are available to the family within twenty-four hours following receipt of a referral to the program; and

(e) Duration of service is limited to a maximum of forty days, unless paraprofessional workers are used, in which case the duration of services is limited to a maximum of ninety days. The department may authorize an additional provision

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